THE Parson's COUNSELLOR, WITH THE LAW OF TITHES or TITHING.

In Two BOOKS:

The First sheweth, the Order every Parson, Vicar, &c. ought to observe in obtaining a *Spiritual Preferment*, and what *Duties* are incumbent upon him after the taking the same, and many other things, necessary for every CLERGY-MAN to know and observe.

The Second shews in what manner all Sorts of *Tithes*, *Offerings*, *Mortuaries* and other *Church-Duties* are to be paid, as well in *LONDON* as else where, and as well by the *Canon* as *Common* and *Statute Laws*, and in what Courts and manner they may be recovered, what *Charges* they are subject to, and many other things concerning the same, necessary for CLERGY-MEN and *all others* to know.

Written by Sir *SIMON DEGGE* Kt.

LONDON,
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I do Allow the Printing of this Book

Fra. North.

537 ... 85

TO THE
RIGHT HONOURABLE
AND
RIGHT REVEREND
FATHER in GOD
THOMAS,
LORD BISHOP
OF
Lichfield and *Coventry.*

My Lord,

I *Thought to have sent this Trifle into the World without Patron, or Authors Name to it, but 'tis well*

known, how ſcandalous it is to that Child, whoſe Parent is aſhamed to own it; I therefore reſolved to run the Cenſure of a Critical World, and then obſerving how antient Dedications have been both by Greek *and* Latine *Authors, and that they are continued to this day throughout all Chriſtendom, I reſolved not to be ſingular: and then conſidering, that this little Undertaking was performed at the Requeſt of ſome reverend Clergymen of Your Lordſhips Dioceſs, and that*

it

it was nurſed up to what it is now preſented to your Lordſhip there likewiſe, I conceived it could not challenge the Patronage of any other more properly than of Your Lordſhip; and therefore ſuch as it is, I here humbly preſent it to Your Lordſhip: My Lord, at firſt I deſigned no more but the Second Part of what it now is, but obſerving Your Lordſhips diligent and great care at Your Lordſhips Primary Viſitation at Derby *againſt Simony, Dilapidations and Non-*

reſidence, the three great Peſts in the Church, I added three Chapters upon thoſe Subjects, and after adding one thing after another, it came to make a diſtinct Part of this Work alone. My Lord, Your Lordſhip has had many Honourable and Worthy Predeceſſors, and I cannot forbear to mention to Your Lordſhip, Your immediate Predeceſſor my Lord Biſhop Hacket, *with what indefatigable Induſtry did he repair, or rather re-edifie the Church at* Lichfield, *which*

be

he happily lived to finish, a Work could hardly have been performed by any other; how circumspectly, prudently and diligently did he govern his Church, never absenting himself, unless in his Majestie's and Countrey's Service; how constantly did he visit and preach through his Dioceſs? A Religious Pattern for all his Clergy, what great Inſight had he both in the Civil, Canon and Common Laws, that related to the Church Government? How oft did he ſit

in his Consistory to see Justice done? Nay, what did he neglect that became a Worthy Prelate to do? and for his deep and profound Learning in his Function certainly few exceeded him, if I have any Judgment. My Lord, I have observed three things perpetuate mens memory to Posterity, Children, Learned Writings and publick and eminent Buildings, he was fortunate in them all; he has left a Worthy Son to inherit his Name, Virtue, and Temporal Estate; he

has

has left many Learned Works for the benefit of Posterity, whereof some are already made publick, and he has made himself no less eminent by his publick Buildings, witness his Cathedral Church at Lichfield *and Trinity Colledge in* Cambridge, *where he had his Education; besides many other Works of Piety and Charity in those few years he was Bishop. My Lord, God has not yet blest you with Children, but may in good time to preserve Your Name, and I have*

heard

heard Your Lordſhip intends ſome eminent Works for the Publick; and that Your Lordſhip intends to go on, where Your Predeceſſor left, in Building a Palace for Your ſelf and Succeſſors, I have great reaſon to believe, having heard Your Lordſhip ſo often declare You would do it, and having laid Your hand to the Plow in preparing ſome Materials towards it, I know You will not look back; Your Lordſhip is a great Lover of Hoſpitality, which can never be ſo

Titus 1. 8.

ſplendid

ſplendid as in a Palace of Your own Building: And hereby Your Lordſhip will make Your ſelf as eminent in the next Age, as Your Worthy Predeceſſour is in the preſent, than which nothing can be greater ſatisfaction to all, but chiefly to

My Honoured good Lord,

Your Lordſhips moſt dutiful Son, and moſt obedient Servant

S. Degge.

To the Courteous Reader.

Co.2.44.b. IT is obſerved in the ſecond part of Sir *Edward Cokes* Reports in the Biſhop of *Wincheſters* caſe, that there were two great perſecutions of the Chriſtian Religion, the one under *Diocleſian*, the other under *Julian* the Apoſtate. The firſt by murdering the Prieſts that by their preaching advanced the Chriſtian Religion, the latter by ſpoiling the Church of its Revenues: the former, contrary to expectation advanced, and not ſuppreſſed Religion: for it has proved in all Ages that *ſanguis martyrum eſt ſemen Eccleſiæ*, for the patient

patient ſuffering of ſo many Martyrs of the Primitive Chriſtians gave the World a ſufficient Teſtimony that thoſe poor Chriſtians had ſome extraordinary Divine aſſiſtance to undergoe with patience ſo much cruelty that no others durſt put themſelves to the trial of. But the taking away the revenues of the Church Martyred the Prieſthood it ſelf, and ſtruck at the foundation; for when People ſaw there was nothing left but perſecutions, no ſuſtenance for thoſe that Miniſtred at the Altar, it diſcouraged them to breed their Children up to a ſtudy that advanced them to nothing but

danger,

danger, which introduced great ignorance of the true Knowledg of God and Religion, so that as one killed the Priests, the other destroyed the very Priesthood it self. And though the Apostle St. *Paul* got his Living by his labour, that he might not become burthensom to his Proselytes; yet the same Apostle tells us that *the Labourer is worthy of his hire*, and that by the Law of *Moses the Oxe was not to be muzled that treads forth the Corn*: and by way of expostulation in another place says, *who goes on warfare at his own charge? who plants a Vineyard and eats not of the fruit thereof? and who feeds a Flock*

2 Cor. 11. 9.

2 Cor. 11, 12, 14, 16. Mat. 10. 10. 1 Tim. 5. 18.

2 Cor. 9. 7, 9, 10.

Flock and eats not of the milk thereof? for he that ploweth ſhould plow in hope, and he that thraſheth ſhould be partaker of his hope. And again, ſays he, *is it a great thing that thoſe that ſow to you Spiritual things ſhould reap carnal?* And do you not know (ſays the ſame Apoſtle) *that they that Miniſter about holy things live of the things of the Temple, and that they that wait at the Altar, are partakers with the Altar*; for ſo hath the Lord ordained, *that they that preach the Goſpel, ſhould live of the Goſpel*: what effect this Doctrine wrought amongſt the Primitive Chriſtians, you may read in the fourth Chapter of the *Acts*

of

of the *Apoſtles*, where it is ſaid, that *as many as were poſſeſſors of Houſes or Lands ſold them, and brought the prices of things that were ſold, and laid them down at the Apoſtles feet; and diſtribution was made to every man according as he had need.* But the Chriſtians of this preſent Age are ſo far from ſelling their Houſes and Lands, and laying the price at the Apoſtles feet, that they will rather detain that from the Clergy, which by Law and right is due to them. But, certainly, had the ſincerity of the Primitive Chriſtians continued, I ſhould never have needed to have ſet pen to the paper upon this ſubject I am

now

now about, which is, *the Law of Tithes or Tithing*; a duty eſtabliſhed by the Laws of this, as of other Nations, for the maintainance of the ſecular Clergy, and for their ſake it is that I have undertaken this work. There was a Tithing Table publiſhed many years ago By a Batchelor of Laws; wherein he has learnedly ſet forth the manner of Tithing by the Canon and Eccleſiaſtical Laws; but thoſe Laws and the Common Laws of this Realm differing in many things wherein the Common Law is to be preferred; that Tithing Table has often led both Parſon and Pariſhioners into ma-

ny errors, beſides the ſeveral diſcharges from payment of Tithes, either abſolutely, or *ſub modo*, of divers Lands in *England*, by the Statutes or Common Laws makes great alteration here from the Canon Laws, to rectifie which, and, as near as may be, to reconcile the Canon and Common Laws, I did by the perſwaſion of ſome Reverend Divines firſt make ſome Animadverſions upon that Tithing Table, but when I had done that, conſidering there were many more things in relation to Tithing, than I could conveniently apply to that Text concerning Preſcriptions, Cuſtoms, Compoſitions, and

and other priviledges, beſides the Laws concerning Offerings, Mortuaries, and other Church duties fit for all men to know, as well Lay as Clergy: I adventured upon this larger work, which I the rather did becauſe I do not find any other that hath publiſhed any compleat work in this kind, or to reconcile the Common and Canon Laws, that kind of learning lying diſperſed in our Law Books, I have therefore in favour of the Parſons and Vicars, taken up a former reſolution, and adventured to expoſe my ſelf to the publick cenſure. And though I cannot promiſe any perfection in this

work, yet I dare presume to say it is the most perfect work of this nature yet extant; though I can pretend to nothing of it but the errors and mistakes, which I will be thankful to any body that will friendly correct, that I may make it more exact in a second Edition if I have encouragement. The hindrance of conversing with the learned, by reason of my confinement to the Country, and publick Libraries, hath hindred me of some helps I might have had thereby. Perhaps it may not be so acceptable to those in whose favour I have writ it, because it comes from the pen of one who professes himself a com-

mon

mon Lawyer. But in my Judgment, in this Nation, wherein the common Laws and cuſtoms of the Country prevail againſt the Canon and Eccleſiaſtical Laws; this ſubject is not altogether improper, if not moſt proper for a common Lawyer. And truly I have through this diſcourſe dealt with as impartial an hand as the matter would admit. And though the Clergy may think it to their prejudice, that I have at large ſet forth the ſeveral diſcharges by which lands are freed from the payment of Tithes; yet in that I have given them a clear light, which lands cannot be ſo priviledg-

ed, and what Preſcriptions and *modus decimandi* is not good, being well aſſured that there are more Lands at this day eſcape payment of Tithes upon pretence of ſome priviledg, to which they have no Right, than thoſe that pay Tithes, and might legally be diſcharged: But when I have done my beſt endeavour to ſerve the Reverend Clergy, I cannot give them Incouragement to depend upon their own Judgments, grounded upon any thing here writ; for though this may ſuffice to give them ſome light, what ſhall be due to them; yet I cannot hope by any thing I can write, to make them complete Lawyers;

ers; for many *Quære*'s will arise, that no foresight of mine could give an Answer to: but this benefit I hope they will receive by my labours, that they may put their Case, and make their doubts known more pertinently to the learned. I had no sooner finished this little Tract concerning Tithes, but I considered there were many other things almost as useful for a Clergyman to know, as the Law of Tithes: And though Mr. *Hughes* of *Graves-Inn* many years since published a learned Tract, which he intitled the *Parson's Law*; yet there are many more things necessary for a Clergyman to know, that are

there only briefly, or not at all, touched upon, and of such force that they must either be performed and observed to make a man a compleat Parson, or to make him none, though never so exactly instituted and inducted, if omitted. I have therefore in the first place before I come to the Law of Tithes shewed, what Simony is, and what danger those run themselves iuto, that are guilty of it, what things every Parson, Vicar, *&c.* is to do before, at, and after, his Institution and Induction, to make him a compleat Parson, *&c.* what Dilapidations are, and how punishable, what priviledges the Clergy

gy have at this day by the *Laws* of *England*, what charges and payments their Tithes and Church-livings are ſubject unto, what Cauſes of Deprivation have been allowed of by the *Laws* of *England*, what Leaſes they may take or ſet, and what Statutes they may fall in danger of; and of pluralities, and who is qualified to have them, and in what manner to be accepted, Non-reſidence and many other things neceſſary for every *Clergy-man* to know: I have divided the whole into Two Books, and them again into ſeveral Chapters and Paragraphs, and added a ſhort Table for the more ready

dy finding of any thing in either; I have likewise added a List or Catalogue of all the Abbeys and Priories, that were valued in the Kings Books at 200 *l. per annum*, or upwards, and which were dissolved by the Statute of 31 *H.*8. the Lands of which can only pretend to any privileg to be discharged of the payment of Tithes; in which I have rather chosen to write after Mr. *Dugdale*, being a sure Author, than Mr. *Speed*, in whom I have observed many Mistakes; I must beg the Readers Patience to correct the Mistakes of the *Printer* (which are too many by reason of my absence from the Press) by the

Errata

Errata annexed, and for my own I ſhall take it kindly from any body, that will in a friendly manner inform me of them; for *Humanum eſt errare*, and though I may have cauſe to be aſhamed of them, yet I will never be aſhamed to amend.

Vale.

The Contents of the ſeveral Chapters contained in the firſt part of this Book, Intitled the *Parſons Counſellor.*

Who may be a Parſon. CHAP. 1. *ſheweth, who may, or may not be a compleat Parſon, Vicar,* &c.

How he muſt proceed in taking a Living. Chap. 2. *ſheweth, how one that is a Perſon fitly qualified to be a Parſon, Vicar,* &c. *ought to proceed in the obtaining and accepting of the ſame.*

Jure Patronatus. Chap. 3. *ſhews, in what caſes 'tis neceſſary for the Biſhop to have a* jure patronatus, *and how to proceed in the ſame, and what is the force and effect thereof.*

Pluralities. Chap. 4. *ſhews, how the Law ſtood concerning pluralities before the Stat. of* 21 H. 8. *who are qualified within that Law to have pluralities, and how they ought to behave themſelves in taking the ſecond Livings, ſo that the firſt may not be made void.*

Simony. Chap. 5. *ſhews, what Simony is, and who ſhall be ſaid to be guilty of it, and what are the dangers enſuing thereupon.*

What he is to do, at before and after inſtitution and induction. Chap. 6. *ſhews, what one is to do before and at inſtitution, and after induction, to make himſelf a compleat Parſon.*

Non-reſidence. Chap. 7. *ſhews, what is required further of Parſons,* &c. *after induction, and what non-reſidence is, and the dangers incurred thereby, and what matters will excuſe the ſame.*

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Chap. 8. *ſhews, what ſhall be ſaid to be dilapidations, and how the ſame is remedied and puniſhed.* — *Dilapidations.*

Chap. 9. *ſhews, for what cauſe a Parſon, Vicar, &c. may be deprived, according to the rules of the Common Laws.* — *Deprivation.*

Chap. 10. *ſhews, what Leaſes a Parſon, Vicar, &c. may make of his Glebe Tithes, and what Farms he may, or may not take, and within the danger of what other Statutes they may fall.* — *Leaſes. Farms.*

Chap. 11. *ſhews, what Priviledges are allowed to the Clergy in Holy Orders by the Statute and Common Laws of this Realm.* — *Priviledges of the Clergy.*

The Contents of the ſeveral Chapters contained in the ſecond part of this Book, Intituled the *Law of Tithes, or Tithing.*

CHAP. 1. *ſhews, what Tithes are, the ſeveral ſorts and kinds thereof, and how the ſame become due.* — *Quid, quotuplex, & quo modo debet.*

Chap. 2. *ſhews, by whom and to whom Tithes ought to be paid.* — *By whom, and to whom due.*

Chap. 3. *ſhews, of what things Tithes are due to be paid, and in what manner the Tithes of Corn, Hay, &c. are to be paid.* — *What things are Tithable. Corn, Hay, &c.*

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Calves, Milk, Cheese, Wool, Lambs, Pigs, &c. Chap. 6. *shews, where and in what manner the Tithes of Calves, Milk, Cheese, Wool, Lambs, Pigs, &c. are payable.*

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Note

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Note that in my references to printed Books in this Treatise, I for the most part refer to the page and part of the page where the matter is to be found in this manner, if the matter be at the upper end of the page I mark it with three pricks thus ∴ if in the middle thus .. if at the lower part thus ·· and where the Book is numbred by Fol. I add the *A.* or *B.* side, as it happens.

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THE

THE Parſon's COUNSELLOR.

CHAP. I.

The Firſt Chapter ſhews, Who may, or may not, be a Parſon, Vicar, &c.

HAVING taken upon me to ſhew how to make a compleat Parſon, Vicar, &c. It will be neceſſary in the firſt place to ſhew, who is capable of being ſo. And in the firſt place, He that is to be a Parſon muſt regularly be of free Condition, competently

Who may be a Parſon, or Vicar.

learned, skilled in the Language the People speak or understand, where he is to be Parson, Vicar, &c. Next he must be twenty four years of Age, conformable to the Government and Doctrine of the Church of *England*, and not criminous, outlawed, excommunicate, Jew, or miscreant, and must be free from Symony. And a man that is a Bastard is not capable to be a Priest, nor by Consequence a Parson; but in this Case Dispensations are frequently granted.

5 H. 7. 20. a.. Co. 5. 58. a.. Lindwood c. *eos qui de non*, &c. Ibid.

So a man that is not of free Condition, but a Villain, or a Miscreant, that believes not the Truth, an Infidel, that resists the Truth, a Jew, Schismatick or Heretick, that do not believe aright, cannot be Parsons, &c.

14 H. 7. 28. b..

So if a man be criminous, that is, guilty of murder, manslaughter, perjury, forgery, or other foul Crime, that is *malum in se*, is not capable to be a Priest, Parson, Vicar, &c. And the Bishop may refuse to accept such Parson, if presented to a Living: and it matters not whether the Party be convict of this Crime or not; So that the Ordinary have certain knowledg of the truth thereof.

Dyer 293. p 3. 38 E. 3. 2. a.. cap. *Imprimis & infra* Lindwood.

But for a man to be guilty of haunting of Ale-houses or Taverns, or a player at unlawful Games, which are only *malum prohibitum*, and not *malum in se*; it is no Impediment to his being a Parson, Vicar, &c.

Co. 5. 58 a.

So

So if a Man be illiterate, and cannot ſpeak a Language his Pariſhioners underſtand, he ought not to be admitted to be Parſon of ſuch Pariſh, but may be rejected by the Biſhop, &c. For it is all one not to be able to inſtruct his Pariſhioners in the truth by reaſon of Ignorance, as not to be underſtood; for when *the blind leads the blind, both fall into the ditch.*

Dyer 293. b p. 1, 2, 3. 254. b. p. 2. Albany verſ. Eveſque Lich. M. 26, & 27 Eliz. C B. ro. 201 3. Lucas verſ. Eveſque Bath. p. 3. El. C. B. per Bendloes.

At this day no man may be a Parſon, before he be a Prieſt in Orders, nor can he * be a Prieſt before he is twenty four years of age: and ſo by conſequence no man can be a Parſon regularly, till he be paſt twenty four years of Age.

Stat. 14 Car. 2. cap. 14. * Stat. 13. El. cap. 12.

And for this reaſon a Biſhop, &c. may refuſe a Clerk, becauſe he is not in orders; but he cannot refuſe him, becauſe he wants a Teſtimonial.

1 Leonard. 130.

Neither can any man be Parſon of that Church, for the obtaining whereof he hath been guilty of Symony, as ſhall be ſhewed more at large in the Chapter of Symony.

Vide poſtea cap. 5.

And regularly all things that are cauſes of Deprivation, are juſt cauſes to make a man incapable of a Living, and for which the Biſhop, &c. may refuſe to admit ſuch Clerk.

And note, the Son is made incapable to ſucceed his Father by ſeveral Canons.

Lindwood *c. cum à jure inhibitum*, &c.

CHAP. II.

The Second Chapter ſhews, how one that is fitly qualified to be a Parſon, ought to behave himſelf in obtaining a Living.

A Perſon ſo qualified, as the Law requires, muſt, without any corrupt or Symoniacal Contract, obtain a Preſentation from the right and undoubted Patron of the Church, whereof he deſigns to be Parſon; which may be in this Form.

The Form of a Preſentation.

Reverendo in Chriſto patri & domino T. *divina permiſſione* L. & C. *Epiſcopo, ejuſve Vicario in ſpiritualibus generali*, A.B. *Armiger, indubitatus Patronus Eccleſiæ parochialis de* C. *in Comitatu* D. *ſalutem in domino ſempiternam. Ad Eccleſiam de* C. *prædictam veſtræ dioceſios, modo per mortem* (if void by the death of the laſt Incumbent;) but if it be by reſignation, then you muſt ſay (*modo per reſignationem*) but if the Church be void, by the laſt Incumbent's being made Biſhop, or by taking a ſecond Living, not being qualified, then you may ſay (*per Ceſſionem*) or as the ſpecial matter is, or if by deprivation, then you muſt ſay (*per deprivationem*) and then proceed E.F. *ultimi incumbentis ibidem jam vacantem, & ad meam donationem pleno jure ſpectantem, dilectum mihi in Chriſto*

Christo G.H. *Clericum in Artibus magistrum paternitati vestræ præsento humiliter supplicans, quatenus præfatum* G.H. *ad dictam Ecclesiam admittere, eumque Rectorem ejusdem Ecclesiæ instituere cum suis juribus & pertinentiis universis, cæteraque expedire & peragere, quæ vestro in hac parte incumbunt officio pastorali, dignemini cum favore. In cujus rei Testimonium his præsentibus sigillum meum apposui: Datum primo die* M. *anno regni domini nostri Caroli Secundi Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ, Regis, fidei defensoris,* &c. *vicesimo octavo, Annoque domini* 1675.

How to proceed upon the Presentation.

As soon as a Clerk has obtained such Presentation, it behoves him with all convenient speed, and within six months after the Church became void by Death, Creation or Cession of the last Incumbent, of which avoidances the Patron is at his peril to take notice, or within six months after notice legally given to the Patron by the Ordinary of the Church becoming void by Deprivation or Resignation tender his Presentation to the Bishop of that Diocess within which the Church is, or to his Vicar general, or in the vacation, when there is no Bishop of such Diocess, to the Guardians of the Spiritualties, to whom the Law allows a reasonable time to examine the abilities of the Clerk; for the Ordinary is not bound as soon as a Clerk tenders his Presentation to dispatch his

22 H. 6. 29. b.

Doct. & Student. l. 2. c. 31. Dyer 327. p. 7. Roll. 2. 364. *&c.*

What time the Bishop may take to examine a Clerk.

Lindwood chap. *Cum secundum Apostolum.*

his business *; but if he be busie about the affairs of his Church, he may make the Clerk to stay till he hath done, or may appoint him a convenient time to attend him for his approbation.

Then if the Ordinary, &c. upon the examination of the Clerk, find him fit in all points, as above in the first Chapter is directed, then he admits him in these words, *Admitto te habilem*, &c. And thereupon the Ordinary institutes him in these words, *Instituo te Rectorem Ecclesiæ parochialis de C, & habere curam animarum, & accipe curam tuam & meam.* And this the Bishop may do as well out of his Diocess as within it; for as to this matter it is not local, but follows the Person of the Bishop whithersoever he goes. When the Bishop has instituted the Clerk, the Ordinary or, &c. makes a mandate under Seal to the Arch-deacon of the place, * or to such other Clergy men as he pleases, to induct the Clerk. And it may be made by the Dean and Chapter, but not by the Patron: for though by the Institution the Church is full against all persons save the King, yet he is not compleat Parson till Induction; for by the Institution he is admitted *ad officium* to pray and preach, yet he is not intitled *ad beneficium*, until he be formally inducted, which may be done by the delivering of the Ring of the Church door, or latch of the Church gate, or

* Hob 317. 15 H.7. 7. b.. *The Canon-Law allows two monethis; but the Common Law, which in all these Cases is to be prefer'd, allows only convenient time.*

Admission and Institution.

Co.4. 79. a.. 32 H. 6. 28. b.. 33 H.6.24 a.. 38 H.6.15.a.. Knowls verſ. Dobbyns Pri. Jac.C.B. Carter verſ. Crofts 27 El. C.B.

Who may make Induction.

* Callis verſ. Launr. Parſon Denye's Caſe. H.6. Jac. ro. 190. B R. Plow.528. b.

How Induction is to be made.

Lindley verſ. Dodſon M.9. Jac. C. B.

or by delivery of a Clod or Turf, and Twigg of the Glebe, but the moſt common and uſual way is, and therefore the ſafeſt, by delivery of the Bell-rope to the new inſtituted Clerk, and he tolling the Bell: And the Arch-deacon, if he do it, is to take but 40 *d.* for doing of it. Lindwood c. *Item quia Archi-diaconi*, &c.

Now note, that the ſix Months, within which the Patron is to preſent, is to be accounted by 192 days, and not by 28 days to the month. Yelv. 100. Co. 6. 61. b. 62 a.

And note, that the Clerk is to do many things more at the time of his Inſtitution, and after his Induction, to ſecure himſelf in his Living, which he will find in the ſixth Chapter following, to which I refer him, and wherein very great care is to be taken, that all things be duly performed and obſerved. *What's to be done after Induction.*

There hath been ſome Diſpute, whether the ſix months ſhall commence from the time of the death of the laſt Incumbent, or other avoidance, or from ſuch time as the Patron could reaſonably have notice, conſidering the diſtance of place; and more particularly, where the Patron or Incumbent ſhould happen to be beyond the Seas at the time of the avoidance. *From what time the ſix months ſhall commence.*

And there hath been a Canon, *quod tempus ſemeſtre non incipit verſus patronos, niſi à tempore ſcientiæ mortis perſonæ.* Roll. 2. 363. 9.

But by the Common Law of *England*, I conceive the Patron is bound to take notice of the Death, Creation or Ceſſion, as aforeſaid.

Regiſt. Orig. 42. And this is proved by the Regiſter, where in a prohibition 'tis ſaid, *Quia ſecundum legem & conſuetudinem Regni noſtri Angliæ Epiſcopi, &c. beneficia vacantia per lapſum temporis ante ſex menſes vacationum eorundem tranſactos conferre non debent, nec conferre conſueverunt, aliquibus temporibus retroactis.* So that it appears by this Writ, that the time of the ſix months to collate by lapſe commence from the vacancy, and not from the notice; but this muſt be intended of ſuch avoidances, whereof the Patron is bound to take notice, as aforeſaid.

What time the Patron is to preſent.

Kelw. 50. b. 14 H. 7. 21. a. Dyer 227. p. 7. And it is alſo to be obſerved, that if the Patron do preſent his Clerk, which is refuſed by the Ordinary, becauſe he is illiterate, criminous, &c. there the Patron ſhall have no longer time to preſent but ſix months from the time of the avoidance, where the Patron is bound to take notice of it, and ſix months from the time of notice, where the Ordinary is bound to give notice of the Avoidance.

The Patron preſents after Lapſe incur'd.

13 E. 4. 3 b. 11 H. 4. 80. a. Hutton 24. But note, that in all Caſes, if a Church lapſe to the Biſhop or Arch-biſhop, and the Patron preſent his Clerk before the Biſhop or Arch-biſhop have collated, the

the Biſhop, &c. is bound to admit the Clerk of the true Patron, and cannot take advantage of the lapſe. But the Canoniſt *contra.*

Lindwood *Si aliqua evincente, &c. verba injuria.*

But if the Biſhop collate, and the Patron preſent before Induction, he comes too late.

Dyer 270. p. 56.

But the great queſtion is, if the Church lapſe to the King, and the Patron preſents before the King take advantage of the lapſe; Whether this ſhall avoid the Kings Title by Lapſe, is made a *Quære* by *Dyer*: but *Hobart* ſeems to be clear in it, that the King ſhall not have the benefit of the lapſe; but divers * Authorities are againſt them, *Ideo quære*, *Rolls.* 2. 368. *b.* 27 E. 3. 84. *b. Co.* 7. 28. *Doct. and Stud. lib.* 2. *cap.* 31.

Quere.

Dyer 277. p. 55.
Hob 152.
Hut. 24.
* Cro. Eliz. 119.
Cro. Jac. 216. a
Owen. 3, & 5.

There hath been ſome opinions amongſt the Canoniſts, that a Lay-Patron ſhould have but four months to preſent; but an Eccleſiaſtical perſon ſhould have ſix months, and ſo it is ſaid is the Law of *Scotland*; but the Common Law, which rules the point here and with more reaſon, gives the Patrons in both Caſes ſix months.

What time the Patron has to preſent. Screne *Regiam majeſtatem* 10. b. chap. *Quoniam verbum devolvatur.*

In the Caſes of Deprivation and Reſignation, where the Patron is to have notice, before the Church can lapſe the Patron is not bound to take notice from any body but the Biſhop himſelf, or other Ordinary; which muſt be given perſonally

Doct. and Stud. *ubi ſupra.*

Co. 6. 29. b.
Cro. El. 119.
Dyer 328. a.

ſonally to the Patron, if he live in the ſame County; but if the Patron live in a forraign County, then the notice may be publiſhed in the Pariſh-Church, and affixed on the Church door: but ſuch notice muſt expreſs in certain the Cauſe of the Deprivation, &c. and it muſt be *verè*, *propriè*, *perſonaliter*, & *non fictè* by the Eccleſiaſtical Laws. There is ſeveral other ways, that a Church may become void, of which the Patron is at his peril to take notice, as union, not payment of the Tenths, &c.

Dyer 346. a.
Co. 6. 29. b.
Dyer 346. b.
Harp. 3 and 4 El.
Dyer 237. p. 29 255. p. 5.

CHAP.

CHAP. III.

The third Chapter ſhews, in what Caſe it is neceſſary that the Biſhop have a Jure Patronatus, *and how the ſame is to be proceeded in, and what is the effect and fruit of the ſame.*

In what caſes a Church ſhall be ſaid litigious.

IF two Patrons preſent to one and the ſame Church by ſeveral Titles, the Church is become litigious; becauſe the Biſhop knows not which hath the very true and rightful Title to the ſame, and by Conſequence knows not which Clerk to admit: And I take it the Church is not leſs litigious, though they both preſent the ſame perſon; becauſe when the Biſhop admits him as the Clerk of the one, he puts the other out of poſſeſſion, and conſequently to his action; and the Biſhop becomes a Diſturber, if he who is put out of poſſeſſion prove to have the better Title.

Where a Jure Patronatus *is neceſſary, and how to be proceeded in.*

Now the Biſhop in this Caſe, to ſecure himſelf, ought to award a *Jure Patronatus* to inquire of the right; which is merely an Inqueſt of Office in nature of a Writ *de proprietate probanda*, and does not at all † bind the Title or Right of the Party.

† 34 H. 6. 38. b.

But

35 H.6. 18. b. 19. a.*. 34 H.6.12.a.*. Hob. 317.*. 34 H.6.38. 5 H.7.22.a. it is made a Quære.

But it ſeems a queſtion in our Books, whether the Biſhop is bound to ſue the *Jure Patronatus* at his own coſt and peril, or only at the prayer and at the coſt of the Party that prays it, or of both Parties; but the better opinion ſeems to be, and ſo is the practice, that the ſame is ſued at the prayer, and at the coſt of the one, or both the Parties if they joyn.

Now whereas the Church may become litigious by double or plural Preſentations, ſo it may become more litigeous by the *Jure Patronatus*; for if two Patrons preſent, and each of them prays a *Jure Patronatus* by himſelf (as they may) and the one Jury gives a Verdict for the ones Title, and the other for the others Title, here the Biſhop receives no Direction at all, but the Church ſtill remains litigious.

But here ariſes another great queſtion, whether the Biſhop in this Caſe may let the Church Lapſe, and collate; or whether he be not bound to admit one of the Clerks at his Election, or at his peril. Mr. *Serjeant Callis* in his reading was of opinion, he might refuſe both Clerks in this Caſe, and ſuffer the Church to Lapſe; and ſo is the Book in 21 H.6. by *Newton* and *Paſton. tamen inde quære.*

Callis Read. 3. 21 H.6.44.a.*. Quære.

And as a Church may become litigious by a *Jure Patronatus*: ſo it may become litigious after a *Jure Patronatus*, and a Verdict given for one of the Parties; for if a

41 H.6.45. a.*.

Jure

Jure Patronatus be awarded, and a Verdict given for one of the Parties, and before the Patron preſents, for whom the Verdict was given, and prays admittance of his Clerk (as ought to do, before the Biſhop is bound to admit his Clerk) another preſents here; the Church is become litigious *de novo*, and the Biſhop in this Caſe, as it ſeems, may award a new *Jure Patronatus* to determine the right of Patronage between the new and the old Patron, for whom the Title was found in the former.

But ſome have thought, that though the Church be not litigious by double or plural Preſentations, yet the Biſhop, if he doubt of the Patrons Title that preſents, may award a *Jure Patronatus*, and inquire of ſuch Patron's Title, and by that means prevent the ſurpriſe, that may happen to other pretenders by ſudden admiſſion of the Clerk, and in caſe the right of Patronage be found for a † ſtranger, the Biſhop may admit his Clerk. 21 H. 6. 44. Callis Reading. 29. Hob. 319. † 34 H. 6. 40. a.

But it ſeems, that if the Biſhop admit the Clerk, that is preſented before the Church becomes litigious by a ſecond Preſentation, that the Biſhop acquits himſelf thereby from being a Diſturber; but by this means the Biſhop may do great wrong in ſurpriſing other Patrons that have right: And the Law doth not ſo haſten the Biſhop's proceeding, but that, as has been ſaid, he may take convenirnt time Hob. 317.

to

to examine the Clerk, that other pretenders may take notice of the vacancy.

But though the Church by any of the means aboveſaid be become litigious, yet I think there is no doubt but that the Biſhop may admit either Clerk without a *Jure Patronatus*, but then he doth it at a double peril; for if the Patron, whoſe Clerk he admits, have not a good Title, or having a good Title do not make it out in a *quare impedit*, or other Action brought for the Church, the Biſhop will be made a diſturber.

Hob. 317.

How far the Biſhop is bound by a Verdict in Jure patron.

And it ſeems likewiſe, that the Biſhop is not ſo bound by the Verdict in a *Jure Patronatus*, but that he may admit the contrary Clerk, if he ſee cauſe, or be ſatisfied he has the better Title; but this ſeems to be againſt Juſtice and the true intent of the Law.

34 H. 6 11. b.

Hob. 318.

And Sir *Henry Hobart* was of opinion, that an action of the caſe lyes againſt the Biſhop by the Patron that is ſo diſturbed, if in a *quare Impedit* he prove to have the better Title, and recover his damages by reaſon of the delay and trouble the Biſhop hath thereby put the Patron to; but then the Biſhop muſt not be made a Defendant in the *Quare Impedit*: but of this *quere*.

Quære.

The manner of proceeding in a Jure Patronatus.

Now the manner and form of proceeding in a *Jure Patronatus* is thus: The Biſhop iſſues forth a Commiſſion under his Seal

Seal to his Chancellor, or ſome other perſons, whom he pleaſes, that are expert in the Canon and Eccleſiaſtical Laws: in which Commiſſion (ſince the Title of Patronages is determinable at the Common Law) it were not amiſs to joyn ſome Common Lawyer of eminent Learning and Integrity; and theſe Commiſſioners are by him authorized to ſummon a *Jure Patronatus*, and proceed to the Determination thereof; and then the Commiſſioner or Commiſſioners ſo authorized iſſue out a Mandate to ſome Officer of their own to ſummon a Jury, which muſt be one half Clerks, and the other half Lay-men; and if they refuſe being duly ſummoned to appear, the Commiſſioners may proceed againſt the Clergy-men by Sequeſtration, and the Lay-men by Eccleſiaſtical Cenſures to compel an appearance. 22 H. 6. 29. b.

When a full Jury of Clergy-men and Laicks appear, which muſt be ſix of each at leaſt, the Commiſſioners are to ſwear firſt a Clergy-man, and then a Lay-man till twelve be ſworn at leaſt of the Jury: But the Commiſſioners may ſwear a greater number than twelve of the Jury, if they pleaſe or ſee cauſe, ſo always that there be an equal number of Lay-men, and Clergy-men ſworn in the whole.

The

Callis Reading 29.

The points inquirable by this Commiſſion are five.

The points inquirable in a Jure Patron.

1. *Si Eccleſia vacat, & quomodo vacavit?*

2. *Quis Patronus ultimò preſentavit?*

3. *Quis eſt verus & indubitatus Patronus?*

4. *Quis præſentare debet ad Eccleſiam nunc vacantem?*

5. *De Indonitate perſonæ præſentatæ.*

But the main and chief points are the third and fourth, the laſt reſting wholly in the Judgment of the Biſhop.

21 H. 6. 45. a.

After the Jury is ſworn and charged, the Counſel and Advocates of both Parties are to ſhew their reſpective Clients Titles, and produce their Evidences to prove the ſame. And after the Evidence is given on both ſides, and Counſel fully heard, the Jury may give their Verdicts forthwith, or the Commiſſioners may give them time to conſider of their Evidence, and may aſſign them another time and place for the giving their Verdict as in other Inqueſts of Office; but I like much better (to avoid being tampered with) that they give their Verdicts forthwith before the Party, unleſs new Evidence be expected.

22 H. 6. 29. b.

The

The effect of this Suit is no more but for the Bishop's security, that he may avoid being a Disturber, for the verdict of this Jury is a sufficient warrant for the Bishop to admit and institute his Clerk, for whose title the verdict is given, and the Bishop for so doing shall never be made a Disturber, though the other Patron against whom the verdict is given shall after recover in a *Quare Imp.* or other action.

The effect of a jure patronatus.

But suppose the Jury will not agree of their verdict, and the one half be for the one Patron, and the other half for the other Patron; or, that they refuse to give any verdict at all; or if they find a special verdict, as I suppose they may; the Bishop in all these cases is left to proceed at his peril, as though no *jure patronatus* had issued at all; or perhaps in this case he may discharge the Jury, and summon a new *jure patronatus*.

What's to be done, if the Jury will not give a verdict.

8 H. 6. 18. b

34 H. 6. 12. a.

Callis Read. 29.

And it is to be observed, that after a verdict found in a *jure patronatus* for the Patron, the patron must again request the Bishop to admit his Clerk; otherwise, if the Church lapse after six Months, the Bishop may Collate.

What's to be done where Coparceners, Joynt-tenants, or Tenants in Common, present severally.

But if two Coparceners present several Clerks by the same Title, this doth not make the Church litigious, but the Bishop is bound to admit the Clerk of the elder sister: but this is to be intended where the eldest sister presents alone, and not joyntly

21 H. 6. 45. 2. per *Ascur.*

34 H. 6. 40.

5 H. 7. 8.

11 H. 4. 58.

33 H. 6. 32.

1 Inst. 186. b.

ly with any other of the Coheirs.

Doct. and Stud. 115.b. Kite verſ. Eveſque Briſtow P.7. Jac. C.B. 1 Inſt. 186.b. 6 E.4.10. b. 34 H.6.40. b.

But if two joyn-Tenants or Tenants in Common preſent ſeveral Clerks, that makes not the Church litigious; for the Biſhop may admit the Clerk of which he pleaſes: or if they do not agree and joyn in preſenting a Clerk within the ſixth Month, the Biſhop may collate.

Ubi ſupra.

And note that the Biſhop needs not to make Commiſſioners to inquire *De jure patronatus*; but he may, if he pleaſes, do the ſame himſelf: and therefore, if his Commiſſioners neglect to do their duties, it ſhall not excuſe him, becauſe it was his folly to name ſuch Commiſſioners. But the opinion of the Civilians ſeems otherwiſe: for they ſay that the party ſhall name the Commiſſioners; and if they neglect their duties, it ſhall be at the peradventure of the party that names them. And though they make a falſe return, or no return at all, it ſhall excuſe the Biſhop; and the party grieved is left to his accord againſt the Commiſſioners.

If the Commiſſioners neglect their duties. 22 H.6.30.a.

Verdict does not bind. 21 H.6.45.a. 34 H.6.38.b.

And, as has been ſaid, the verdict in a *jure patronatus* does not bind the adverſe partie's Title, though it may be ſome evidence for him whoſe Title is found to be the beſt.

CHAP.

CHAP. IV.

Shews how the Law ſtood concerning pluralities before the Statute of 21 H. 8. cap. 13. *Who are qualified within that Law to have pluralities, and how qualified perſons ought to behave themſelves in taking the ſecond livings, ſo that the former may not be void.*

A Plurality is where one and the ſame perſon obtains two or more ſpiritual preferments with cure of Souls: againſt which there have been ſeveral Canons, and they have been alwayes diſcountenanced at the Common Law, and ſeveral Complaints have been made againſt them in Parliament; yet the Pope held them up by his diſpenſations. How agreeable theſe diſpenſations were to God's ſervice; nay how prejudicial they have been to the advance of the Chriſtian Religion, and are, I leave others to judge; it being no part of my undertaking. And though I find a great Judg of this Nation defending of them, yet I find a Canon in the general Council of *Lateran* againſt them, in the Year 1215. in theſe words, *Statutum eſt quod, quicunque receperit aliquod beneficium*

What a Plurality is.

Co. 4. 90. b. Co mag. ch. 626. vide *the Records there cited.*

Hob. 149. Concil. tom. 4. 221. cap. 29.

Canon againſt Pluralities.

habens curam animarum anexam, si prius tale beneficium obtinebat, eo sit jure ipso privatus, & si forte illud retinere contenderit, alio etiam spolietur, Is quoque, ad quem prioris spectat donatio, illud post receptionem alterius conferat cui merito viderit conferendum.

Tom. 5. 368. cap. 64. And now let me tell you the fruits of Pluralities out of another Counsel, which is delivered in these words. *Res ipsa loquitur, plura beneficia, potissimum quibus cura animarum subjecta est, non sine gravi Ecclesiarum damno ab uno obtineri; cum unus in pluribus Ecclesiis rite officia persolvere, aut rebus earum necessariam curam impendere, nequeat.*

The effect of Plural.

I might enlarge much more upon this Subject; but it being collateral to what I design, this last shall serve. And if any body desire further satisfaction upon this Subject, I commend him to the History of the Council of *Trent*; where he will find that by the greater and better opinion of that Council, Residence by him that hath a preferment in the Church with cure of Souls is of Divine right; and that therefore the Pope had no power to dispense with non-Residence, the consequence of which is, that it is against Divine right for any to take more Benefices than one with cure of Souls, because the same person cannot be resident in two places at one and the same time.

Consil. Trident. 495.

But

But as the Pope by ſtratagem made the endeavours of all the good men in that Councel ineffectual, ſo by his frequent diſpenſations to take Pluralities without number or meaſure He made the Canons of the Church of no other effect than to increaſe his own Revenue by diſpenſations. More 119.

Acceptance of a ſecond Living makes the firſt void.

But it ſhould ſeem the Councel of *Lateran* was received and approved (as to that point) in this Kingdom, and the Law was always taken, that he that had one Living with cure of Souls, and without diſpenſation accepted another with cure of Souls, made the firſt void: So that the Patron of the firſt Church might preſent a new Clerk, and needed not to ſtay till the former Clerk ſhould be legally deprived. But in this caſe the Church doth not lapſe till the the end of ſix Months, to be accounted from the time the Patron had legal notice of the vacancy from the Biſhops but after induction the Patron, as it ſhould ſeem, is bound to take notice at his peril: And as to all others but the Patron, the Church remained full till induction into the ſecond Living; and ſo are all the Books, that ſeem *prima facie* to differ, reconciled.

Co. 4. 95. b.
44 E. 3. 22. a.
9 E. 3. 22. a.
10 E. 3. 1.
14 H. 7 28. b.
14 H. 8. 17. a.
F. N. B. 34. L.
15 E. 3. 9.
11 H. 4. 37.

Several acts to reſtrain the Pope.

But the Parliament of *England*, that in all Ages made bold with his Holineſs, and to reſtrain the exorbitances of the Pope and Court of *Rome* (as the Reader may

Cro. Car. 357.

27 E.3.cap. 1. 3 R.2. cap.3. 7 R.2.cap.12. 2 H.4 cap.4. 38 E.3. cap.1. 16 R.2. cap.5. 6 H.4. cap. 1. 25 E. 3. and *Proviſors* and 27 E.3.cap.1.

ſee, if he pleaſes to ſatisfy himſelf by the ſeveral Acts of Parliament mentioned in the margent againſt Proviſions ſuing at *Rome*, impeaching judgments given at the Common Law, Aliens being beneficed within this Realm, priviledging religious orders from payment of Tithes, and many other things; and I cannot forbear to obſerve to the Reader the boldneſs of the Parliament in the ſixth Year of *H.* 4. with his Holyneſs, where they reſtrain the giving of exorbitant and juſt fees for the inveſtures of Biſhops. The act begins thus: *Whereas there is a damnable cuſtom in the Court of* Rome *to take more for the inveſture of Biſhops*, &c. Certainly theſe brave Parliamenteers never expected his Holineſſe's indulgence or Pardon, this ſeeming a ſin as high as that againſt the Holy Ghoſt to charge the Holy Father with a damnable cuſtom in his Court, to uſe extortion and ſymony.)

For All againſt Pluralities. 21 H.8.cap.13. Co.4.79.b.

I ſay the Parliament, to prevent the miſchiefs of theſe diſpenſations, made a Law in the twenty firſt Year of *H.* 8. *That if any Perſon or Perſons, having (that is being inſtituted) one Benefice with cure of Souls being of the yearly value of eight pounds or above, ſhall accept and take any other with cure of Souls, and be inſtituted and inducted into the poſſeſſion of the ſame, that then, immediately after ſuch poſſeſſion had thereof, the firſt Benefit ſhould be void.*

And

And that it ſhould be lawful to every Patron having the advowſon thereof to preſent another, and the Preſentee to have the benefit of the ſame, as though the Incumbent had died or reſigned, and that any licence union or other diſpenſation contrary to that all ſhould be void.

If this act had gone no further, it had been an excellent Law: But there is ſo many qualifications in this Law that wholly defeat the benefit of it, ſince the Nobility are grown ſo numerous as they are at this day; ſo that the grievance is now become almoſt, if not altogether, as great as ever, and deſerves a new and ſtricter reformation; for almoſt all the greateſt and beſt Livings of the Kingdom are now held by pluraliſts, and ſerved by mean Curates.

But now let me return to the Act, and let me obſerve.

That this Act has only provided a Remedy where the firſt Living is of the Yearly value of eight pounds or above, which muſt be underſtood according to the valuation taken in the twenty ninth Year of King *E.* 1. till the twenty ſixth of *H.* 8. And after that time according to the valuation then returned into the Exchequer, and now made uſe of in the firſt fruits office. But many former Opinions and Books have been, that the valuation ought to be according to the true value. *Idem quære.*

Cro. cap. 456.* Pig. Jac. C.B: Eveſque Durham verſ. Eveſque Peterburrough.

Dyer 237. p. 29. Cro. Eliz. 853. *Quære.*

But in case the first Living be under the yearly value of eight pounds, or a *fine cure*, then the party may accept a second; as he might have done before this act, with a dispensation, which he needs not now go to *Rome* for, although he be not qualified within this Law.

Who are qualified to have Pluralities.

But by this good Act there are several persons qualified to have and retain Pluralities; and those are of three sorts: 1. by Service, 2. by their Birth, and the 3. by Dignities. And first of those that are qualified by service.

Qualification 1. 1. All the King's Chaplains (which are not of his Councel) and of the Queen, Prince, Princess, and Brethren and Sisters, Uncles and Aunts of the King.

2. Eight Chaplains of every Arch-Bishop.

3. Six Chaplains of every Duke.

4. Five Chaplains of every Marquess and Earl.

5. Six Chaplains of every Bishop.

6. Four Chaplains of every Viscount.

7. Three Chaplains of the Lord Chancellor, and of every Knight of the Garter and Baron.

8. Two Chaplains of every Dutchess, Marchioness, Countess and Baroness, being Widows.

9. Two Chaplains of the Treasurer and Controller of the King's House; the

King's

King's Secretary, the King's Almner, Clerk of the Cloſet, and Maſter of the Rolls.

10. One Chaplain of the Chief Juſtice of the King's Bench, and Warden of the Cinque Ports for the time being.

All theſe in reſpect of their Services may purchaſe licenſe, or diſpenſations, and take, receive, and keep two Parſonages or Benefices with cure of Souls, notwithſtanding this Act.

But thoſe of the King's Chaplains, that are ſworn of the King's Councel, may purchaſe licenſe or diſpenſations, and take, receive, and keep three Parſonages, or, *&c.* with Cure of Souls.

2. The ſecond qualification is by Birth; that is, the Brothers and Sons of all Temporal Lords, and of Knights, born in Wedlock, may purchaſe licenſe or diſpenſations, and take, receive, and keep, two Parſonages, &c. with cure of Souls; in which qualification it is to be obſerved, that no proviſion is made for Baſtards, nor for the Sons of Biſhops, Abbots, Priors, &c. and note, in this caſe the Sons and Brothers of Knights have greater priviledg than the Sons and Brothers of Baronets. *Qualification by Birth.*

3. The third qualification is of certain perſons dignified in the Univerſities; and *Qualification by dignity.*

of

of that sort are all Doctors and Batchelors of Divinity, Doctors and Batchelors of the Common Laws, which shall be admitted to any of those degrees by any of the Universities of this Realm, and not by grace only; all which may purchase licenses or dispensations, and take, receive, and keep two Parsonages, &c. with cure of Souls.

Proviso, that above the number shall not be advanced.

And in this act there is a negative *proviso* to this effect, That no person or persons to whom any number of Chaplains, or any Chaplain by the provisions aforesaid is limited, shall in any wise by colour of the same provisions advance any Spiritual person or persons above the number to them appointed, to receive, or keep any more Benefices with cure of Souls, than is above limited.

Proviso, that they must have Testimonials.

There is another *Proviso*, that the Chaplains so purchasing, taking, receiving, and keeping Benefices with cure of Souls, as aforesaid, shall be bound to have and exhibit, where need shall be, Letters under the sign and Seal of the King, or other their Lord or Master, testifying whose Chaplains they be, or else not to enjoy any plurality of Benefice by being such Chaplains. Upon this clause some question has been made, whether a Chaplain can be retained within the meaning of this Law by parol; and it seems he may, so that they have such Testimonial, when they pray their dispensation: but the safest way

Boy verf. Savesere. T. 28 El. C. B. ro. 1130. Hughes p. 41.

Boy verf. Evesque Lincoln & alios T 31 El. ro. 725. C. B.

way is to have it in writing, and it must be under Hand and Seal.

Now having shewed what persons are qualified within this Statute, I will in the next place shew how the Clerk, that would have the benefit of his qualification within this Law, ought to proceed in the taking a second Living, so that the first may not be void, which is in this manner.

How to proceed in the taking of a second Living.

The Person that falls within any of the qualifications within this Law which makes him capable of a plurality, and having obtained a presentation to a second Living, must carry his Testimonial or retainer under the Hand and Seal of his Lord or Master to the Master of the faculties, who is to make out his dispensation or Licence to accept the second Benefice; which being obtained, he must next have it confirmed under the great Seal of *England*; and after he has thus obtained his dispensation, and has it confirmed under the great Seal, then, and not before, he is to apply himself to the Bishop of the Diocess where the Living lies for his admission and institution: for though by the Letter of the Act the first Living is not void untill induction into the second Living, the words whereof are as follows (*If the party be instituted and inducted in possession of the second Living that then the first shall be void.*) Yet to avoid the great inconvenience that otherwise

Stat. 25 H. 8. cap. 21.

First Living void by institution into the Second.

wiſe would enſue, it has been held that the firſt Living is void upon the bare inſtitution into the ſecond Living; and ſo it ſhould ſeem the Law was before the making of this Act, where the party had no diſpenſation.

Co. 4. 79. b. Hob. 166.

Which Chaplains ſhall be qualified, where above the number is retained.

And it is to be obſerved upon this Law, that in caſe any Lord or other Perſon, whoſe Chaplains are qualified within this Law to have two or more Livings incompatible, do retain his full number of Chaplains, and after one or more above his number; that in that caſe the Supernumerary Chaplains, that were retained after ſuch Lord or other Perſon had retained his full number allowed by the Statute, are not qualified by this Law to have pluralities of Livings, although the ſupernumerary Chaplains be preferred before the other that were firſt retained: but if a Chaplain qualified within this Law be legally inducted into a ſecond Living with a diſpenſation as he ought, although his Maſter be attainted, degraded, or removed from his Office, yet he ſhall retain his Plurality during his life.

More 56 l. Co. 4. 90. a. B. verſ. Eveſque Glouc. & Saveacre. Anderſon.

Dyer 312. p. 88.

The Maſter dies, &c. before preferment.

But if one be retained Chaplain to any Lord or other Perſon, whoſe Chaplains are qualified within this Law, and his Maſter dies, is attaint, degraded or diſplac'd before his Chaplain be preferred to a ſecond Living; or if ſuch Lord or other Perſon diſcharge ſuch a Chaplain (as he may), in all

Co. 4 17 b.

all theſe caſes the Chaplain loſes his qualification to have plurality of Livings incompatible.

But if a Dutcheſs, Marchioneſs, Counteſs or Baroneſs do retain a Chaplain, and after marries, this ſhall not take away the qualification of ſuch a Chaplain, but that he may have plurality of Livings incompatible within this Law as he might have done before. Co. 4. 118. B. *The Mrs. marries.*

And if ſuch Dutcheſs, &c. retains Chaplains, and after marries, and after becomes a Widdow again; yet the firſt retainer ſtands good, and was not Countermanded by the Marriage or death of the Husband. Cc. 4. 119. a.

And note that there is a *Proviſo* in this Act, that though a Dutcheſs, Marchioneſs, Counteſs, or Baroneſs, do Marry a Husband under the degree of a Noble Man or Baron, that yet nevertheleſs ſhe may retain two Chaplains which ſhall be qualified within this Law.

And it is declared by this Act, that Deanaries, Arch Deaconries, Chancellorſhips, Treaſurerſhips, Chaunterſhips or Præbendaries in any Cathedral or Collegiate Church, or any Parſonage that hath a Vicar indowed, or any Benefice perpetually impropriated, are not to be eſteemed Benefices with cure of Souls within this Act. *What preferments are not within this Law.*

And if any Duke, Lord, or other Perſon

son, whose Chaplains are qualified within this Law, shall have a double capacy to qualifie his Chaplains; as if a Duke, &c. be made Lord Warden of the Cinque Ports, or a Baron; Master of the Rolls, Knight of the Garter; or, &c. in all these cases such Duke, Baron, &c. can but qualifie his number of Chaplains according to his best qualification only.

Co. 4. 118. a.

Chapl. returned in the life of the Father.

Co. 4. 90 b.

And if the Eldest Son of a Duke, Marques, &c. retain Chaplains in the Life time of his Father, who after dies, and the honour descends upon such Son; yet this retainer will not qualifie his Chaplains to have pluralities within this Statute, because at the time of the retainer he was not capable to qualifie them. *Et quod ab initio non valet, tractu temporis non convalescit.*

Lord discharges Chaplains after they are prefer'd.

Co 4. 90. a.

If a Duke, Marques, &c. retain his full number of Chaplains which are advanced, and then discharge them; yet he cannot during their Lives qualifie any other within this Statute.

A greater number of Chapl. retained together.

Co. 4. 90 a. Dyer 312. p. 88.

But if a Duke, Marques, &c. that has power within this Act to qualifie Chaplains, at one instance of time retain double his number of Chaplains, or any supernumerary Chaplains in that case; those only shall have the benefit of qualification that are first prefer'd. *Quia in equali jure melius est conditio possidentis.*

If

If one that is qualified within this Statute take a ſecond Living incompatible, and be inſtituted or inducted into the ſame before he have obtained a diſpenſation, the firſt is void; though *Dyer* makes a *quære* of it. Co. 4 79. B. Dyer 312. p. 88.

And note that it hath been reſolved, that the King himſelf cannot diſpence with this Law. *This Law is not diſpenſable.* Dyer 351. B.*

But if one that is not qualified within this Law to have two Livings incompatible ſhall obtain a ſecond Living, and be inducted into the ſame, and after neglects to read the Articles of Religion within the time limited; or doth any other Act that makes the latter void *ab initio*; in ſuch caſe the firſt Living ſhall not be void within this Law. Co. 4. 90. B.* Dyer 377. B. Co. 5. 102. B.* Hob. 168. *A pluraliſt neglects to read the* 39. *Art. the firſt Living is not void.*

And if a Parſon, &c. that is qualified within this Statute to have plurality of Livings incompatible, be made a Biſhop, his qualification ceaſes, ſo that after he cannot take two Benefices incompatible by force of ſuch qualification; but if he had two Livings before he was made Biſhop by qualification and diſpenſation within this Statute, he may retain them by *Commendam*: and although he were the King's Chaplain, it alters not the caſe; for by the acceptance of a Biſhoprick he ceaſes to be the King's Chaplain within this Law. Hob. 157.

And

Parson's Law l. 2. 14 & 15. *Uniting a Living is a Plurality.*

And if a Parson have one Living incompatible, he cannot obtain another with Cure to be united, unless he be qualified and have a Dispensation, but that the first will be void.

Parson and Vic. of the same Church si, &c.

Mr. *Hughes* in his Parsons Law puts two Cases, which he is of opinion are out of danger of this Law. The first is, where there is a Parsonage and Vicarage indowed, and the Parson without Dispensation or Qualification accepts the Vicarage: and he conceives, that notwithstanding that these are two several Advowsons and Benefices, and that several *Quare Impedits* may be brought of them, and that several actions are maintainable by the Parson and Vicar concerning their possessions; that yet nevertheless the presenting of one person to both is no Plurality within this Statute or the Canon: because the Parson and Vicar have both but one Cure of Souls; besides there is a *Proviso* in the Act, that no Parsonage with a Vicarage endowed shall be accounted a Benefice with cure of Souls within that Act.

2. *Rectories in one Church.*

But his other Case seems more doubtful; and it is put where a Church has two Rectories, and each has cure of Souls *per se*, and are incompatible, and one person obtains both these Livings without qualificaton or dispensation. This Case he conceives to be both out of the danger of this

this Act and the Canon. 1. Becauſe it is not in *pluribus Eccleſiis*. 2. When there is ſeveral Advowſons in one Church, neither Parſon hath the whole cure of Souls, and the words of the Statute are, *having one Benefice with cure of Souls of the value of eight pounds takes and accepts another benefice with cure of Souls*, &c. But here the Church is one and the ſame, and the cure of Souls the ſame; and therefore as he conceives neither within the danger of the Statute or Canon: but in a private report that I have, this very point came in queſtion in the latter end of the Queen's time, and the Reporter ſays, that *Walmeſly* and *Beaumont* were of opinion, that this Caſe was within the *Statute* but *Anderſon* doubted, and ſeemed to incline to the contrary. *Ideo quære inde.*

Cooper verſ. Beauchampe. P. 37. El. C. B.

By the Reſolutions of the ſeveral Caſes before mentioned it is worth Obſervation, how the Judges of the Common Law have endeavoured to advance this Law, and reſtrain the qualifications: And yet when all is done this Law produces little more effect, than the transferring

There is now a 1000 qualifications at leaſt in England by Service, beſides the Chaplains of the King, Queen, Princes of the blood, and Dowagers, and probably as many more by birth and dignities; and there is about 4300 Livings in England of 10 pound per annum in the King's books and upwards, and it is not the leaſt Livings the Pluraliſts catch at, though at firſt they crept into the Church, where Livings were ſo ſmall they were not able to maintain a Miniſter, and if the 41 Canon of King James was obſerved, many miſchiefs in this Caſe might be prevented.

the power of Diſpenſations in this caſe from the Pope, and ſcattering it amongſt the Nobility and others; and how many Pluraliſts is there in *England*, that hardly ſee either of their Livings in a year? ſo that generally the beſt Livings in the Kingdom are ſerved with poor Curates, and no hoſpitality kept: A thing worth the Conſideration of a Parliament.

CHAP. V.

The fifth Chapter ſhews what Symony is, and who ſhall be ſaid to be guilty of it, and what are the dangers enſuing thereupon.

HAving ſhewed my Clerk how to obtain a Benefice, and likewiſe thoſe which are qualified how to take a ſecond Living; It reſts that I ſhould ſhew them, what is to be done after Induction to confirm them in their benefices: But becauſe Symony is not only ſcandalous to the Clerk that is guilty of it, but alſo very dangerous; and I told my Clerk in the ſecond Chapter, that he muſt obtain his

Preſen-

Presentation without any corrupt or Symoniacal Contract. I thought it fit by the way to let my Clerk know not only what Symony is, but likewise the danger that attends it: Symony, by the Canonist and School-men is defined to be *Studiosa voluntas emendi vel vendendi aliquid spirituale aut spirituali annexum opere subsecuto.* And *Thomas Aquinas* says, *Quod Simonia dici videtur à* Simone Mago, *qui donum Spiritus sancti emere voluit, ut ex venditione Signorum quæ per eum fierent multiplicatam pecuniam lucraretur, & sic illi qui spiritualia vendunt, conformantur* Simoni Mago *in intentione, in actu vero illi qui emere volunt: Illi autem qui vendunt in actu, imitantur Giezi discipulum Helisæi, de quo legitur* 4 Reg. cap. 5. *quod accepit pecuniam à leproso mundato, unde venditores Spiritualium possunt dici, non solum Simonaici, sed etiam Giezitæ.* And St. *Gregory* says, *Quicunque sacros ordines vendunt aut emunt, Sacerdotes esse non possunt, ut scriptum est, Anathema danti, Anathema accipienti hæc est Simonaica hæresis: Quomodo ergo, si anathematicati sunt, & sancti non sunt, sanctificare alios possunt? Et cum in Christi corpore non sunt, quomodo Christi corpus tradere vel accipere possunt? qui maledictus, benedicere quomodo potest?* And the same Holy Father farther says, *Si Presbyter per pecuniam Ecclesiam obtinuerit, non solum Ecclesiam privetur,*

What Symony is.

Panormit. c. *Nemo extra eo,* &c.

Tho. Aq. 2o. 2æ q. 100. Art. 1. Cro. El. 789.

Tho. Aq. 2o. 2æ. q. 100 Art. 4o.

In Registro hab. 1. q. 1o. Canon, *Quicunque.*

Ibid. Canon Presbyter.

privetur, sed etiam Sacerdotii honore spolietur. And it appears clearly, that the very intention to buy Spiritual gifts or preferments carries with it the guilt of Simony as well as the act it self; And therefore the Holy Apostle said to *Simon Magus*, *Cor enim tuum non est rectum coram Deo; pœnitentiam itaque age ab hac nequitia tua, & roga Deum si forte remittatur tibi hæc cogitatio cordis tui*: But this is in *foro conscientiæ* only, and not punishable by any humane Laws, unless it proceed to the Act.

Act. Apost. c. 8. v.

Division. *Canons against Symony.*

Symony by the Canonist is distinguished into *Simoniace & Simoniacus*: The first is where the Clerk comes in by Symony, whereunto he is not party or privy: *Simoniacus* is he which obtains a spiritual preferment by a corrupt and Symoniacal Contract, to which he is party or privy, and consenting.

Against this Corruption in the Church many Canons have been made, amongst which I shall instance only two, and those provincial ones of our own Nation. The first was made in the year of our Lord 1229 in the time of *Richard Wethershead* Archbishop of *Canterbury*, and is as follows.

Lindwood c. *Nulli liceat Ecclesiam*, &c.

Nulli liceat Ecclesiam nomine dotalitii ad aliquem transferre, vel pro præsentatione alicujus personæ pecuniam vel aliquid aliud emolumentum pacto interveniente recipere

cipere: quod si quis fecerit, & in jure convictus vel confessus fuerit ipsam tam Regiam quam nostra freti authoritate patronatu ejusdem Ecclesiæ imperpetuum privari statuimus: but it was not sufficient by a Canon to deprive a man of his Freehold or inheritance, be the word *imperpetuum* taken for life, or for ever, as it imports; neither was this Canon ever put in execution or attempted so to be, that I find.

The other Canon I made mention of, I find amongst the Canons of *Otthobonus*, the Popes Legate here in *England*, which is to this effect.

Quia plerumque evenire didicimus, quod, cum ad vacantem Ecclesiam fuit præsentatio facienda, is qui præsentandus est prius cum patrono de certa Summa de bonis Ecclesiæ sibi annuatim solvenda pascisci tur, & sic pactis ad Ecclesiam præsentatur. §. Nos huic actui tam Simoniæ vitium quam Ecclesiæ dispendium ingerenti occurrere intendentes, universas promissiones & pactiones hujusmodi penitus revocamus, & eas imposterum fieri districtius inhibemus: Et si factæ fuerint, vires aliquas decernimus non habere. Chap. Quia plerumque.

But this Canon was of as little effect as the other, as to the making the Contracts void, which were only determinable at the Common Law, where this Canon could not be pleaded in Bar. I have mentioned these two Canons not for

the validity or use so much as to satisfie the Readers, what Provincial Canons we have against Symony, and to how little effect they were before the Statute of 31. *Eliz.* But there were some general Canons of the Church of greater force, whereby *Simoniaca* is punished by Deprivation, and *Simoniacus* by Deprivation and perpetual disability, not only as to the Church he was presented to upon a Symoniacal contract, but all to all others: and being *malum in se*, it is not dispensable either by the King, or any other.

Cro. El. 788, 789. Per *Warburton.*

And it has been held by some of the Fathers to be a Heresie, if not the Sin against the holy Ghost; but neither the greatness of the sin, nor the severity of the Canons were sufficient to restrain this evil in the Church, till the Parliament of *England* took it into their Care, and in the 31. *Eliz.* it was inacted.

* *Per Bullam Sixtinam privatur ipso facto de omnibus dignitatibus, beneficiis, officiis, & efficitur inhabilis ad omnia.*

3 Inst. 154. Tho. Aqu. 2. 2æ. q. 100. art. 1 Sect. 2 Sr. Aust. de hæresibus in principio. St. Greg. in Reg. hab. 1. q. 1. &c. d. 1.

Stat. 31. Eliz. cap. 6. Stat. *Against Symony.*

*That if any person or persons for any Sum of money, reward, gift, profit or benefit directly or indirectly, or for or by reason of any promise, agreement, grant, bond, Covenant, or other Assurance for any Sum of Money, reward, gift, profit, or benefit whatsoever directly or indirectly shall * present, or † collate any person to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, &c. or ‖ give or bestow the same for or in respect of any such corrupt cause or consideration, that then every such Presentation,*

* *Relates to Patrons.*

† *This to Bishops.*

‖ *Donatives.*

Preſentation, Collation, gift and beſtowing, and every admiſſion, inveſture and induction thereupon ſhall be utterly void, &c.

And that the Queen, her Heirs and Succeſſors to preſent, collate, &c. for that one Turn only.

And that every Perſon, &c. that ſhall give or take any ſuch Sum of Money, &c. or that ſhall take or make any ſuch Promiſe, &c. ſhall forfeit and loſe the double value of one years profit of every ſuch Benefice. And the perſon ſo corruptly taking any ſuch Benefice ſhall thereupon and from thenceforth be adjudged a diſabled perſon in Law to have and enjoy the ſame Benefice, &c. *Penalty.*

2. *And further, that if any Perſon ſhall for any ſum of money, reward, &c. (ut ſupra) directly or indirectly (other than for ſmall and lawful fees) or for or by reaſon of any promiſe, &c. admit, inſtitute, inſtall, induct, inveſt, or place any Perſon in or to any Benefice with cure, &c. That then every Perſon ſo offending ſhall forfeit and loſe the double value of one years profit of ſuch Benefice, &c. and that the ſaid Benefice, &c. ſhall be eſt ſoon void, &c. And that the Patron, or perſon to whom the advowſon, &c. ſhall and may by virtue of this Act preſent, or collate, &c. as if the perſon were naturally dead, but no lapſe hereby to incur till ſix Months after notice.* *Againſt Precipitate admiſſion or Inſtitution, &c.*

Againſt corrupt reſignations and Exchanges.

3. *And if any Incumbent of any Benefice with cure of Souls do or ſhall corruptly reſign or exchange the ſame; or corruptly take for or in reſpect of the reſigning or exchanging of the the ſame, directly or indirectly, any penſion, ſum of Money, or benefit whatſoever; that then the giver and taker of any ſuch ſum, &c. corruptly ſhall loſe double the value of the ſum ſo given taken or had; the one half to the Queen, &c. and the other Moiety to him that will ſue for the ſame, &c. in any of her Majeſtie's Courts of Record, in which no eſſoine, &c.*

Eccleſiaſtical Cenſures ſaved.

4. *Provided, that this Act ſhall not reſtrain any cenſures Eccleſiaſtical, &c.*

Symony in ordaining and giving Orders to preach.

5. *And further it is provided, that if any Perſon ſhall receive, or take any Money, Fee, reward, or any other profit directly or indirectly; or ſhall take any promiſe, agreement, Covenant, Bond or other aſſurance, to receive or have any Money, Fee, &c. directly or indirectly, to him or themſelves, or any other of their, &c. Friends (all lawful and ordinary Fees excepted) for or to procure the ordaining, or making of any Miniſter, &c. giving any Order and Licenſe to preach, ſhall loſe forty pounds; and the Miniſter ſo made ten pounds. And that if ſuch Miniſter within ſeven years next after ſuch corrupt entring into the Miniſtry, &c. ſhall accept or take any Benefice,*

fice, Living, or promotion Eccleſiaſtical, the ſame Living after induction, &c. to be void. And that the Patron may preſent, &c. as if the party ſo inducted were naturally dead; the one half of the ſaid forfeitures to be to the Queen, &c. and the other half to the Informer to be recovered (ut ſupra.)

Canons againſt Law.

And I do not obſerve that the corrupt Patrons were in danger to ſuffer by any Law or Canon before this Law was made; for, as I ſaid before, his right could not be taken away by a mere Canon not confirmed by Parliament: and before this Law was made the Incumbent that came in by Symony held the Living which he obtained by Symony untill he was legally and judicially deprived by Sentence Eccleſiaſtical, wherein he often eſcaped for want of ſuch proof as the Spiritual Laws required; but this Statute ſtrikes at the root, and makes as well the preſentation, as the admiſſion inſtitution and induction void: So that if this Statute had not given the preſentation to the Queen, the true Patron might have preſented a new Clerk; or in his default the Church would have lapſed. But by this Act the corrupt Patron does not only loſe the preſentation to the King *pro hac vice*; but alſo two years value of the Church, not according to the valuation in the King's Books in the the firſt-fruit Office; 3 Inſt. 154.

but

but according to the true and utmost value of the Church.

3 Inst. 153. But if one that has no right to present shall by means of a corrupt and Symoniacal agreement present a Clerk, who is by his presentation admitted instituted and inducted into a Church; yet this shall not intitle the King to present: for the Act of Parliament makes all void, but a Usurper cannot forfeit the right of another in whom there is no fault.

Co. 12. 74. Note that the Patron shall lose his presentation within this Law, although the Clerk be not privy to the corrupt Contract.

And it should seem by the penning of this Act, that the forfeiture of the double value of the Church is incurred by the corrupt contract only; but the presentation is not forfeited to the King, unless the Clerk be *de facto* presented or collated upon such corrupt Contract.

Clerk not Privy to the Symony. And it matters not whether the Incumbent that comes in by a Symoniacal contract were privy thereunto or not, as to making the Church void; but the great question is, whether the Clerk that is presented upon a Symoniacal contract, to which he is neither party nor privy, be disabled for that turn to be presented by the King to that Church.

I have ſeen the Report of a Caſe in the latter end of the Reign of King *James*, where it was adjudged, that if a Clerk were preſented upon a Symoniacal Contract to which he was not party or privy, that yet notwithſtanding it was a perpetual diſability upon that Clerk as to that Living. Fowler verſ. Lapthorn P. 17. Jac. B.R.

And in the Caſe of *Baker* and *Rogers*, *M.* 42, and 43 *El. B.R.* The caſe was, *Baker* agreed, the Church being void, to give the Patron 180 *l.* for the Preſentation, who preſented his Brother, who knew nothing of the corrupt Contract till after Induction: and though it was clear, that the grant of the Preſentation during the vacancy was merely void, and that *Baker* preſented as an Uſurper; that yet notwithſtanding the Clerk was in by the corrupt Contract; becauſe it was not to be intended, that the Patron would have ſuffered the Uſurpation, had it not been for the corrupt Contract: and there it ſhould ſeem by Mr. Juſtice *Warburton*, that the Clerk was diſabled *quoad hanc*. Cro. El. 788.

And in a Cauſe between the King and the Biſhop of *Norwich* *Cole* and *Sair*, Sir *George Crook*, who was a Counſel in the Cauſe, reports, that Sir *Edward Cook* affirmed it had been adjudged, that if a Church be void, and a ſtranger contracts for a Sum of Money to preſent one who is not privy to the agreement, that notwithſtanding Cro. Jac. 385, Bulſt. 3. 92.

withſtanding the Incumbent coming in by the Symoniacal Contract, is a perſon diſabled to enjoy that Benefice, although he obtain a new Preſentation from the King; for the Statute, as to that Living, has diſabled him during Life.

I muſt acknowledg, if the Law be ſo taken, it is very ſevere; but let us hear
3 Inſt. 154. Sir *Edward Cook* himſelf ſpeak, and he in his Comment upon this Statute ſays, that it was adjudged in the before mentioned Caſe of *Baker* and *Rogers*, that where the Preſentee is not privy nor conſenting to any ſuch corrupt Contract, as is forbidden by this Statute (becauſe it is no Symony in him) there the Preſentee ſhall not be adjudged a diſabled perſon within this act; for the words of the Statute are (*And the perſon ſo corruptly giving*); So as he ſhall not be diſabled, unleſs he be privy to the Contract; and ſo ſays he there it was reſolved. *M.* 13. *Jac.*

Co. 12. 101. And Sir *Edward Cook* in that Book, that goes under the name of his twelfth Report, and without doubt was his own, reports, that it was ſo adjudged in the caſe of Doctor *Hutchinſon* Parſon of *Kenne* in *Devonſhire* by the whole Court, that if a Clerk be preſented upon a corrupt contract within this Statute, although the Clerk be not privy thereunto; yet the preſentation admiſſion and induction are all void within the Letter of the Statute:

for

for the Law intended to inflict punishment upon the Patron, being the Author of this corruption, by the loss of his presentation; and upon the Incumbent, who came in by such a corrupt Patron, by the loss of his Living, although he never knew of the corrupt Contract; but if the Presentee were not cognizant of the corruption, then he's not within the clause of disability within the same Statute; and so (says he) was the opinion of all the Judges of *Sarjeant-Inn* in *Fleet-street*. *Mich.* 8. *Jac.*

And it seems to me upon the penning of the Statute, that this opinion is more rational than the former, for the words of the Statute are; *That the Person so corruptly taking procuring seeking or accepting shall*, &c. *from thenceforth be adjuged a disabled Person in Law to have or enjoy*, &c. And though the Incumbent in this case take and accept the Benefice upon the corrupt contract, yet as to him it is not corrupt. But this being a point thus controverted, I shall not take upon me to determine, but leave it to the Judgment of the more learned. *Quære.*

I shall in the next place shew what Contracts have been held Simoniacal within the meaning of this Law. *What Contracts shall be said Symoniacal.*

In a Cause between Doctor *Graunt* and one *Bowden*, it was held (upon an Evidence to a Jury) that where two Parsons Hil. 16. Jac. ro. 667. C. B.

Parſons agreed to change their Livings, and the one promiſed his Patron, that if he would preſent the other with whom he was to exchange, that he ſhould make the Patron a Leaſe of his Tithes at ſuch a Rent; and this was held Symony, although the other was not privy to the Contract, he making the the Leaſe after.

More 916. Cro. El. 685. Smith verſ. Shelburne.

The Father in the preſence of his Son being a Clerk purchaſed the next advowſon of a Church, the preſent Incumbent of the Church being ſick, and not likely to live, who ſoon after died, and he preſented his Son: and this was held Symony within this Statute; but if this had been done in the abſence of his Son, it had not been Symony, becauſe the Father is bound to provide for his Son. *quære* of the difference.

Winch 63. Sheldon verſ. Brett.

And by *Hutton* it was held Symony to purchaſe the next Advowſon, the Incumbent being ſick.

Hob. 165.

In the caſe of one *Winchcombe* againſt the Biſhop of *Wincheſter* and *Puleſton* the caſe was, one *Say* bargained with the Patron (the Incumbent being ſick) for ninety pounds to preſent him when the Church ſhould be void, and for the better aſſurance take a Grant of the next avoidance to Friends in truſt; the Incumbent died, *Say* was preſenred, and this was held Symony within this Law.

There

There is of late time a practice introduced by corrupt Patrons, that, if not nipt early in the budding, will make this good Law of no effect; I mean the taking Bonds for reſignation. And this practice took its riſe from two caſes in Sir *George Crook's* Reports. *Bonds for Reſignation.*

The firſt was between *Jones* and *Laurence*, 8. *Jac.* The Caſe was thus: *Jones* had a Son which he intended to be a Clergy Man, and having obtained a Preſentation from Queen *Eliz.* for the Church of *Streetham* agreed with the Defendant that he ſhould be preſented, ſo that he would reſign when *Jones* his Son was qualified for the Living; whereupon the Defendant entred into a Bond of a thouſand Marks penalty to the Plaintiff upon this condition (having firſt recited the agreement) that if the Defendant within three Months after requeſt ſhould abſolutely reſign his ſaid Benefice, that then &c. And in an action of debt brought upon this Bond the Defendant pleaded *non requiſivit*, which was found againſt him; and in arreſt of Judgment it was moved, that this Bond was made for the performance of a Symoniacal contract, and therefore void; but notwithſtanding the Court gave Judgment for the Plaintiff, and two reaſons are given for the Judgment; the firſt was becauſe there was no averment of the Symony, Cro. Jac. 248. 274.

the

second that it was not material as to the Bond; because that Statute did not make the Bond or Contracts void, but only the presentation, &c. for this I clearly infer from the conclusion of the case. But I confess the sense of the Court was, that in truth if a man be preparing a Son for the Clergy, and have a Living in his disposal which falls void before his Son be ready, he may lawfully take a bond of such person as he shall present to resign, when his Son is become capable of such Living; and I have nothing to say against that opinion, but it is very just and reasonable, nature obliging that every one should take care for his posterity: but if a Patron take a Bond absolutely to resign upon request without any such cause as the preferment of a Son, or to avoid pluralities, or non-residence, or such reasonable cause, but only to a corrupt end and purpose to exact Money by this Bond from the Incumbent, or attempt it, though perhaps the Bond may be good against the Person that entred into it; yet I am clear of opinion for my own part, that the said Bond makes the Church void, and gives the presentation to the King; and it should seem in *Jones* and *Laurence's* case, that if Symony had been averred, it would have been left to a Jury to have adjudged what the intention of the corrupt Patron was.

The other Caſe upon which theſe ſubtil Simoniſts build, was between *Babbington* and *Wood*, 5 *Car.* 1. B.R. where the Caſe was likewiſe in debt upon an Obligation with a Condition, that whereas the Plaintiff intended to preſent the Defendant to ſuch a Living, that if the Defendant upon requeſt after his admiſſion ſhould reſign, that then the Bond to be void, *&c.* Upon *Oyer* of this Bond and Condition, the Defendant demurred, and Judgment was given for the Plaintiff: But all the Court conceived, that if the Defendant had averred, that the Obligation had been made with intent to exact money, make a Leaſe, *&c.* which in it ſelf had been Simony; then upon ſuch a Plea peradventure it might have appeared to have been Simony, and then it might have been a queſtion, whether the Bond had been good or no; but upon this Demur it did not appear there was any Simoniacal Contract, and ſuch a Bond might be made upon a good and lawful deſign, as the preferment of a Son, as in *Jone's* and *Laurence's* Caſe before, to avoid non-Reſidence, Pluralities, *&c.* So that it appears by both theſe Caſes, that Bonds taken upon prudent and juſt ends to reſign are non-Simoniacal; but where ſuch Bonds are taken upon corrupt deſigns, and it be made appear by any ſubſequent practice or action, it is clearly Simony,

Cro. Car. 180. Hut. in Jones 220.

as if the Bond had been expreſly to pay money; for what difference is there between a Bond expreſly to pay money, and a Bond to reſign (which is to pay money, if the Patron ſay, either pay me ſo much or reſign when all the world knows in ſuch a Caſe the Parſon muſt pay the money, or reſign) and be undone? And the world ſhall never perſwade me, that thoſe reverend Judges that gave theſe Judgments ever intended further: and I hope that thoſe reverend Judges, that now ſupply their places, will diſcountenance and diſcourage ſuch practices that tend ſo much to the ruine of the Church and Religion; for I know no Law that tends more to the advancement of learned and religious men than this Law doth, and therefore ought to have a benign conſtruction to the end it was deſigned.

Noy. 22. T. 15 Jac. ro. 205 1. C. B.

I find a Caſe reported, I cannot ſay that is by an Authentick hand, but ſuch as it is I will give it the Reader: it was between Sir *John Paſcall* and one *Clerk* in the 15 year of King *James*, upon evidence to a Jury it was held, that ſuch a Bond was Simoniacal, but the Circumſtances not appearing in the book, the Caſe can be of no great Authority.

But before I ſhake hands with theſe Bonds for Reſignation, it will be convenient I give my young Clergy-man ſome cautions againſt them; for it is an old ſaying,

saying, the Resetter is worse than the Thief, for without Resetters there would be few theeves.

And 1. I hold it a great disreputation for any Clergy-man to give any such bond, which may have the least tincture of Simony; nor do I believe any man of worth will do it, unless it be upon such reasons as aforesaid. *Advice against Bonds for Resignation.*

2. If such Bond carry with it a Simoniacal corrupt design, it makes the Clerk no less guilty of Simony than the corrupt Patron; and then the Clerk not only loses his Living by this Statute, and is for ever incapacitated to have it by any future Presentation, and by the Canon-Law is to be degraded and incapacitated to all other.

Lastly, if he do not resign upon request, he is subject to the whole penalty of the bond; for Simoniacal Bonds, Contracts, &c. are not made void by this Act, but only the Presentment, &c. And so you may observe a difference between *malum in se*, and *malum probibitum* by the Statute, or by the Canon-Law, whereof the Judges at Common Law take no notice. 3 Inst. 153. Margine Noy 72.

It is now to be considered, what Covenants or Agreements shall be said to be Simoniacal within this Law. *What Covenants and agreements are within this Law.*

If a Father-in-Law upon the marriage of his Daughter covenant with his Son-in-Law without any consideration, but Cro. Car. 425.

voluntarily, that when ſuch a Church falls void, which is in his gift, that he will preſent him to it, this is no Simony within this Law; but it ſhould ſeem, that ſuch Covenant in conſideration of marriage, or any other conſideration, had made it Simoniacal.

Noy 142. Baker verſ. Mountford.

So where the Patron took a bond from the Preſentee to pay 10 *l.* yearly towards maintainance of his Predeceſſor's Son, whilſt he remained in the Univerſity unpreferred, was held no Simony: And in that Caſe it was ſaid by *Foſter* Juſtice, that it was adjudged in the Earl of *Suſſex*'s caſe, where the Patron took a Bond of the Incumbent to pay 5 *l. per annum* to the Widow of his Predeceſſor, it was not Simony; theſe were good charitable Reſolutions, *ſed quære rationem inde*; and *Foſter* ſaid, that notwithſtanding great oppoſition in that Caſe, the Parſon enjoyed the Living at that time.

In the next place it will be fit to conſider, what Church-preferments are within this Law; the Statute only names Benefices with Cure of Souls, Dignities in the Church, Prebends and Livings Eccleſiaſtical. The word Benefices with Cure of Souls ſeems chiefly aimed at Parſons and Vicars in Churches parochial: Dignities

3 Inſt. 155. comprehend Arch-biſhops, Biſhops, Archdeacons, Deans, Chauncellors, Treaſurers, Chaunters, Preſenters, *&c.* For Dignities Eccleſi-

Ecclesiastical are defined by the *Civilians* to be *Administratio cum Jurisdictione aliqua conjuncta*; Prebends are particularly named and Livings Ecclesiastical are words of a large extent, and draw in Donatives within the penalty of this Law, as hath been adjudged, though they have no cure of Souls.

Duarynus *de sacris Eccles. ministr. & beneficiis.* lib. 2. c. 6. Fletcher verſ. Machaller T. 7 Car. 1. B. R.

Having held the Reader something long in my Discourse upon the matters relating to the first paragraph of this Statute, I shall after some general Observations upon it draw to a conclusion.

And first it is to be observed, that where any Clerk is in by Simony, or any other dignified person, every stranger as well as the King may take advantage of it: and therefore if the Parson, Vicar, or other dignified person shall bring any action for the Tithes or other things belonging to his Church; the Defendant may avoid the action by proving that the Plaintiff obtained his preferment by a Simoniacal Contract.

Who may take advantage of Simony, quod nota.

Sir John Bowſe verſ. Wright. P. 17. Jac. Hob. 167, 168, 177.

And note, that a Simoniacal Contract, where the Party is not presented in pursuance of it, is not within the penalty of this Law; but it should seem, that if one that has no right present a Clerk upon a Simoniacal Contract, he is within the penalty though an Usurper, but not, as hath been said, to give the King the Presentation.

Contract not executed.

Hob. 167.

Simoniſt dyes poſſeſſed, if the K. loſe the turn. Hob. 166.

It hath been a queſtion, if the Clerk which comes in by Simony dye in poſſeſſion of the Church, whether the King ſhould loſe his Preſentation: but it hath been reſolved that he ſhall not; for the Statute makes the Preſentation, admiſſion, inſtitution, and all void; ſo that the Church was never full of an Incumbent, *& nullum tempus occurrit Regi.*

Simony and Patron and Clerk free. Bath verſ. Potter p. 17. Jac. B.R.

And note, there may be Simony, and neither Patron nor Clerk conſent or be privy to it; and yet the Church for that turn is by Statute given to the King: if the Clerk be preſented by the means of ſuch corrupt Contract, though neither Patron nor Clerk were privy or conſenting to it; ſo the King, though he himſelf cannot be guilty of Simony, may preſent upon a Simoniacal Contract between others, and ſuch Preſentation is void by this Act.

Pardon of Simony the effect. Hob. 167.

Suppoſe a Clerk be preſented upon a Simoniacal Contract, and then the King or Parliament, that is the King in Parliament with the Aſſent of his Lords and Commons, pardons all Simony by expreſs or general words, though this may pardon the penalties, yet the Church remains void.

De miniſteriis & bab.

Canon cum ordinar.

I ſhall now conclude this Paragraph with a ſaying of a holy Father of the Church, *viz.* St. *Ambroſe* upon this Subject: *Cum ordinaretur Epiſcopus quid dedit? aurum fuit: quid perdidit? animam ſuam. Cum alium*

alium ordinaret quid accepit? aurum fuit: quid dedit? Lepra fuit.

I am now come to the ſecond Paragraph of this Statute, which Sir *Edward Cook* (who was a member of this Parliament) tells us was added to avoid haſty and precipitate admiſſions, inſtitutions and inductions, &c. to the prejudice of thoſe that have right to preſent, and thereby putting them to their actions to recover their rights, and there is ſeldom bribes (as I may ſay) in this Caſe given, where the Patron has a good and ſure Title. 3 Inſt. 155. *The reaſon of the Paragraph againſt precipitate Admiſſ.*

The taking or giving above the uſual Fees in this Caſe is as well dangerous to the Clerk as the Officer: for the Church ſhall be void, ſo that the Patron, that has right to preſent muſt preſent again; and the Uſurper and Officer, that takes more than his Fees for ſuch expedition, forfeits double the value of the Benefice for a year, not according to the rate in the firſt fruit Office, but according to the very true value: but upon this Clauſe no diſability reſts upon the Incumbent, but that he may by the true Patron be preſented again; nor lapſe, till after ſix months from the time of notice given by the Biſhop, &c.

And obſerve the penning of this clauſe: it is not that the Church ſhall be *ipſo facto* void, or that the Inſtitution, &c. ſhould be void; but that it ſhall be eſt ſoon void, and *When the Church ſhall be void.*

that the Patron ſhall preſent, as if the perſon were naturally dead; ſo that it ſhould ſeem the Church is once full by this inſtitution and induction, and hence there may ſome doubts ariſe, whether the Church ſhall be void *ipſo facto*, or whether it muſt be avoided by Eccleſiaſtical Sentence of Deprivation: but it ſeems to me, that the Patron may preſent immediately without any Sentence Eccleſiaſtical.

Reſignation and Exchanges Simoniacal.

3. The third Paragraph of this Statute is made againſt ſuch as ſhall corruptly for money, penſion, or other benefit, reſign or exchange their Livings with any other: in that caſe as well the giver as the taker forfeits double the Sum of money, &c. given and received; but this clauſe works no advoidance or diſability in the perſon that is guilty.

The Eccleſiaſtical Juriſdiction ſaved.

The fourth Paragraph preſerves the Eccleſiaſtical Juriſdiction, that they may proceed judicially to cenſure the Parties for their corruption in buying and ſelling Church-preferments: wherein as ſhould ſeem the Eccleſiaſtical Laws in ſome circumſtances are more ſevere than this Statute; for by that Law, as I take it, he that is convicted of Simony, is after incapacitated not only to that Living, but to all other Church preferments; but of this be informed by the Canoniſt. But I know no reaſon, why thoſe corrupt Patrons, that take bonds for reſignation without any reaſo-

Cro. El. 788, 789.

reaſonable cauſe apparent, may not be called to an account before the Ordinary, and puniſhed by Eccleſiaſtical cenſures, if it appear, they were taken to any corrupt end, or if afterwards he ſhall endeavour to exact money by colour of any ſuch bonds.

Corrupt giving Orders and licenſes to preach.

I am now come to the laſt Paragraph of this Statute, which is alſo a two-edged Sword, that puniſhes as well the giver as taker of greater fee or reward than the ordinary and juſt fees for, or for procuring, any perſon to be ordained or made a miniſter, or giving any order or licenſe to preach, &c. but is more ſevere upon the Clergy-man than the Officer; for the Officer only forfeits forty ſhillings, but the Clergy forfeits ten pounds, and all the Livings he ſhall take within ſeven years, are made void by this Law after Induction; ſo that for ſeven years an Incapacity lyes upon the Clerk; how careful ought Clergy-men to be, what Fees they give for their Orders? And note the manner of the penning of this paragraph, that the Church ſhall not be void till after Induction. The firſt Paragraph makes the preſentation, inſtitution and induction, and all void: So that the Church in that caſe is never full. The ſecond Paragraph makes it void, not till after the corrupt admiſſion, inſtitution, inſtallation, induction, inveſture or placing; and this not till after induction,

induction, by which means the Grantee of the next avoidance that presents such Clerks, cannot present again: and so it is where the Patrons present by turn, the presenting such a Clerk will satisfy a turn, if inducted.

Co. 8. 102. a.

How the forf. are to be recovered.

Lastly, observe all pecuniary forfeitures and penalties within this Statute are given to the King and Informer, and are to be recovered by Bill, Plaint, Action of Debt or Information in any of his Majestie's Courts of Record; that is, the *Chauncery*, *King's Bench*, *Commonpleas*, and *Exchequer* at *Westminster*; but not in any inferior Court of Record, and no essoin priviledg, protection or wager of Law is to be allowed; but I conceive the priviledg or protection of Parliament are not intended in these general words, but the common protections and priviledg of Officers and Courts. *Ideo quære inde.*

Quært.

See a Canon against it, and what Fees shall be taken by the Clerks.

Lindwood c. *saeva & miserabilis.*

Mat. 10. v. 8.

Pag 492, 493, 494, &c.

It is not proper for this discourse to examine by what Authority any thing at all is taken for giving Orders, Admissions, Institutions, &c. Since our Saviour says, *Gratis accepistis, gratis date*: But he that has a mind to satisfy himself therein, let him read that most excellent History of the Council of *Trent*, which is faithfully translated by Sir *Nathaniel Brent*, where this point is excellently discussed *Pro.* and *Con.* where I will leave my

my Reader and conclude this Chapter, and in the next place ſhew my Parſon, Vicar, &c. what he is to do before, at, and after, his Admiſſion, Inſtitution, and Induction.

CHAP. VI.

The Sixth Chapter ſhews, what a Clerk is to do before, at, and after, his admiſſion, inſtitution and induction, to make him a complete Parſon.

Every Parſon and Vicar muſt be a Prieſt.

NO Man at this day is capable to be Parſon, Vicar, &c. before he is a Prieſt in Orders, which he cannot be before he is four and twenty years of Age, as has been ſaid; and if any Perſon ſhall be admitted, inſtituted and inducted into any Living before he is in Holy Orders, his admiſſion, inſtitution and induction are void by the late Act of Uniformity: Stat. 14. Car. 2. cap. 4. Secondly, he muſt make his Subſcription according to the ſaid Act, and have a Certificate from the Biſhop or, &c. under his Hand and Seal that he hath ſo done; and then within two Months after he

Subſcription and Certificate.

is

is inducted, he must upon some Sunday, or Lord's-day, during Divine Service (that is, after some part of the Divine Service of the Church for that day appointed is read, and before the whole is finished) read the nine and thirty Articles of Religion in the Parish Church, &c. into which he shall be inducted, and declare his unfeigned assent and consent to all that is therein contained; and he must likewise within two Months after actual possession of such Benefice, &c. (which is intended within two Months after induction, or installation, &c.) read the Book of *Common Prayer* (that is, the whole Service of the Church appointed for that day, as it is there appointed) and likewise declare his assent and consent to all the matters and things therein contained in these words. I. A. B. *do declare my unfeigned assent and consent to all and every thing contained and prescribed in and by the Book intituled, The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of* England, *together with the* Psalter *or* Psalms *of* David, *pointed as they are to be sung or said in Churches, and the form or manner of making, Ordaining, and Consecrating of Bishops, Priests and Deacons.*

Read Prayers.

Read the Articles.

Stat. Supra.

St. t. supra.

Declaration.

And

And if any Parſon, Vicar, &c. fail in the doing of any of theſe things beforementioned, or any of theſe things be neglected, the Church becomes void, and the Clerk that makes ſuch failure, in caſe he ſhall ſue for his Tithes, or any other Church duty, or other thing belonging to his Church; if the Defendant inſiſt upon it, muſt prove the doing of all theſe things: But uſually the Judges in favour of the Clergy, after they have been in poſſeſſion of their Livings ten or twenty Years, or any conſiderable time, will preſume all theſe things regularly done, and will not put the Parſons, &c. to the preciſe proof of them.

And it is to be obſerved that the Parſons, Vicars, &c. muſt upon the acceptance of every new Living or Eccleſiaſtical preferment within this Law repeat all theſe things, for the performance of all theſe things upon the taking of one Living will not ſatisfy for any other.

Advice to the Clergy.

I ſhall give my reverent Clergy Men therefore this caution, that if any of them have accepted any Eccleſiaſtical preferments, and have negligently omitted any of theſe things, and that thereby may be lapſed to the King, that they obtain preſentations from the King *ad Corroborandum*; and that thereupon they perfect all their former neglects.

And

And for the future I adviſe them, that they firſt have ſome credible Witneſſes preſent, when they make their Subſcriptions before the Biſhop; and that they atteſt the Biſhop's Certificate; and that they get two Books of Articles; and that when they read the thirty nine Articles they give one of thoſe Books of Articles to ſome credible Pariſhioners to read with them, and then atteſt the Book, that they were preſent, and heard the Clerk read the ſaid thirty nine Articles during the time of Common Prayer, and declared his unfeigned aſſent and conſent to all the matters and things therein contained, by ſubſcribing their names thereunto; and that the Clergy Man keep ſafely the ſaid Book of Articles with this atteſtation.

And I adviſe, that when he reads the Book of Common Prayer, which muſt (as above is ſaid) be read Morning and Evening, in all things which is preſcribed therein, within two Months after induction; that he likewiſe make ſome intelligent Pariſhioners to read with him, and give them a Copy of the Declaration aforeſaid, and at the foot of it take an atteſtation under their hands of his reading the ſaid Book of Common Prayer and Declaration, which may be done in this form.

First, in a fair legible hand write the Declaration aforeſaid, then write under to this effect,

Memorand. *That upon Sunday the Day of in the Year of our Lord.* A. B. *Parſon of* D. *in the County of* D. *read Common Prayers in the Pariſh Church of* D. *aforeſaid, both in the forenoon and afternoon of the ſame day, according to the Form and Order preſcribed and directed by the Book intituled, The Book of Common Prayer, and Adminiſtration of the Sacraments, and other Rights and Ceremonies of the Church, according to the uſe of the Church of* England, *together with the* Pſalter *or* Pſalms *of* David, *pointed as they are to be ſung or ſaid in Churches, the Form or manner of making, Ordaining, and Conſecrating of Biſhops, Prieſts, and Deacons*; and immediately after the reading the ſame, made a Declaration of his unfeigned aſſent and conſent, to all the matters and things therein contained in the Form and words above written: And then let the Witneſſes hereunto ſubſcribe the ſame Certificate, which the Clerk is to keep carefully with his Inſtitution, induction, and Certificate, with the Book of Articles atteſted, as is above directed. And in theſe things I adviſe all Clergy Men to be very tender and careful.

There

13 El. cap. 12. *What age a Parson ought to be.*

There was an Act made in the thirteenth Year of Queen *Elizabeth*, *That none should be admitted to any Benefice, unless he were three and twenty Years of age, and a Deacon at least, and should subscribe the thirty nine Articles before he should be admitted; and that none should be admitted to Preach or Administer the Sacraments, unless such Persons were 24 Years of Age at least: But this Law is in part altered by the beforementioned new Statute of Uniformity; for now none can be admitted to any Living till he is a Priest in Holy Orders, which he cannot be by this Statute till he is four and twenty Years of age.*

Who may be admitted to a Benefice of 30 l. per annum in the King's books.

And by the same Statute it is enacted, that none should be admitted to any Benefice with cure of Souls, of the value of thirty pounds or upward in the King's Books, unless he be a Batchelor of Divinity at least, or a Preacher licensed by some Bishop, or one of the Universities of this Kingdom; and if not so qualified his Institution to be void.

CHAP.

CHAP. VII.

The Seventh Chapter ſhews the duty of the Parſon, Vicar, &c. after Induction, and the former Ceremonies performed; and treats of non-reſidence, and the penalties thereof, and for what reaſons the ſame may be excuſed.

Parſons, &c. muſt be conformable.

HE that has orderly, as aforeſaid, obtained an Eccleſiaſtical preferment in the Church of England, *muſt be conformable to the Government and Orders thereof, and muſt not uſe any other publick Form of Prayer, than what is preſcribed by the Book of Common Prayer before mentioned, neither muſt be adminiſter the Sacraments of Baptiſm, and the Lord's Supper in any other manner or form, than what is therein and thereby directed and preſcribed.*

Stat. 1. Eliz. cap. 2.

When, and how oft he muſt read the Common Prayers.

And if any Incumbent be reſident upon his Living (as he ought to be) and keep a Curate, he is bound by the Act of Uniformity once every month at leaſt to read the Common Prayers of the Church, according as they are directed by the book of Common Prayer, in his Pariſh-Church in his own perſon, or be forfeits 5 l. for every time he

Stat. 14. Car. 2. cap. 14.

fails therein. See the Statute how he is to be convicted, and the penalty to be levied.

Before every Lecture.

And the Common Prayer by that Statute is to be read before every Lecture: and it is not sufficient to read a piece here, and a piece there, where the Party pleases; but they must read the whole appointed for the day orderly, as it is appointed with all the Circumstances and Ceremonies of kneeling and standing, as is prescribed, otherwise it is no reading of Common Prayers within this Law; quod nota.

Stat. 14. Car. 2. cap. 4.

And note, that by the late Statute of Uniformity, the former Statutes for Uniformity and Penalties therein are extended to this Book of Common Prayer now lately established.

Stat. 1. Eliz. cap 2.

And by the Stat. of 1 *Eliz. It is inacted, That if any Minister, that ought or should sing or say Common Prayer,* &c. *refuse to use the same Common Prayers, or to administer the Sacraments,* &c. *in such order and form as they are mentioned and set forth in the Common Prayer-Book, or shall wilfully or obstinately standing in the same use any other Rite, Ceremony, Order, Form or Manner of Celebrating the Lords Supper, or other open Prayers, or shall preach, declare, or speak any thing in derogation or depraving of the same Book, or any thing therein contained,* &c. *upon Conviction the Party guilty of any of these offences forfeits the profits*

The penalty for using other Forms of Prayer, &c.

profits of all his Livings and Spiritual Promotions for a year, and is to ſuffer Impriſonment for ſix months without bail or mainprize, and upon a ſecond Conviction for the like offence he is to ſuffer impriſonment for a whole year, and be deprived ipſo facto *of all his ſpiritual promotions; and upon a third Conviction for the like offence ſhall be impriſoned during life, and loſe all his Spiritual promotions, if he have any. And if ſuch perſon have no ſpiritual promotions, then for the firſt offence he is to be impriſoned for a year, for the ſecond during life without bayl or mainprize.*

I have been the briefer in theſe matters upon the Statutes of Uniformity, becauſe they are printed at large before the book of Common Prayer, to which I refer the Reader for his fuller ſatisfaction; and they are ſo plain and full, that they need no Comment, but to adviſe all Clergy-men to read and obſerve them cautiouſly.

I ſhall only give the Reader this further caution, that if any Parſon, Vicar, &c. ſhall maintain any Doctrine, contrary to the thirty nine Articles of Religion, it is cauſe of Deprivation; or if he adminiſters the Sacraments in any other Form than is preſcribed by the Book of Common Prayer, he forfeits 100 *l.* by a Statute made in the 13 year of Queen *El.* And by the new Statute of Uniformity this 13 Eliz. c. 12.

penalty is extended to such as do it contrary to the present book of Common Prayer now used.

The next Duty Incumbent upon the Parsons, Vicars, &c. is, that they be resident upon their Cures, a Duty Incumbent upon every one, that hath the cure of Souls in the Church of Christ; for, as *Padre Paulo* in his most excellent History of the Council of *Trent* observes, that in the first 700 years after Christ, there was not any such thing known in the Western Church, that any man should have an Office or Title in the Church, and not do the duty; and many Canons and Decrees have been made against non-Residence: And in the Council of *Trent* it was held by much the greater and better number of the Prelates and Fathers in that Council, that Residence was *Jure divino*, and undoubtedly had been so decreed, if the Pope had not used all his old stratagems against it; but whilst the Pope had power to dispense with residence, all the Canons and Decrees of that Church were of little greater effect than to fill his Coffers with money; for in this Kingdom, how many Bishopricks, Abbies, Priories, &c. were enjoyed (I mean the profits of them) by Forraigners, that never saw them, or took any care of their duties? I should be glad it were much better now.

Page 217. in the English Translation.

Non-Residence when it came into the Church.

The same hist. p. 217. &c. 486, &c. 509, &c. 496.

Residence Jure divino.

But

But the Parliament of *England*, which has ever been the best Guardian of the Church, made bold with his Holiness, and in 21 year of King *H.* 8. made an Act of Parliament to this effect.

That as well every Spiritual Person then being promoted to any Arch-deaconry, Deanry or Dignity in any Monastery, or Cathedral, or other Church conventual, or Collegiate, or being benefited with any Parsonage or Vicarage; as all and every Spiritual Persons, which then after should be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage from the Feast of St. Michael then next following, should be personally resident and abiding in, at, or upon his said Dignity, Prebend, or Benefice, or one of them at the least, and that if any such person wilfully absented himself from his said Benefice &c. by the space of a Month at one time, or two Months at several times in any one year to be accounted as several times, that such Person so absenting should forfeit ten pounds for every such default, the one half to the King, the other half to the Informer to be recovered, as is expressed in the Act. 21 H. 8. cap. 13. *Act against non-Residence.*

And by the same Act, there is a Proviso worth mentioning, though now out of date, to this effect.

That if any Person should procure any Dispensation from Rome *or elsewhere to be non-resident, the Party guilty should*

forfeit twenty pounds. By this and other Statutes mentioned in this book it is evident, that the Parliaments of England, *even when the Pope was in full power, often made bold with his Holineſs to correct his, and his Court's corruption.*

Certainly this was an excellent Law, if there had been no more in it but the diſpenſing with ſuch perſons as by the ſame Law are qualified to have two Livings; and the perſons capable to qualifie Chaplains to have pluralities had not been grown ſo numerous, that there is but few of the beſt Livings but they are held by Pluraliſts, and they either by colour of attending their Lords, their Deanries, or Prebends, find an excuſe to be non-Reſident, which has made this Law of little effect.

The ends of this Law To do their duties.

This good Law principally aimed at three ends or effects:

1. That every Clergy-man might attend his duty in reading the publick prayers of the Church, adminiſtring the Sacraments, preaching, inſpecting the behaviour of his flock, and performing all ſacred and divine Offices, like a good and faithful Shepherd: and I do wonder with what Conſcience any Clergy-man can expect his dues from his Pariſhioner, that does not perform his duty in the firſt place.

2. The

2. The ſecond end of this good Law, is to avoid Dilapidations in the Buildings belonging to their Livings: for you ſhall ſeldom ſee a Non-reſident, but he is alſo a Dilapidator; and 'tis no wonder that he that neglects the Flock, lets the Sheep-fold go to ruine. *to avoid Dilapidations.*

3. The third end of this good Law was to maintain hoſpitality: and I would wiſh every Clergy-Man to remember that the poor have a ſhare in the Tithes with him. *To maintain hospitality.* Stat. 15. R. 2. cap. 6. and 4 H. 4 cap. 12.

And to this end the Statute enjoyns the Clergy-man to be reſident in and upon his Living, that is his Parſonage or Vicarage Houſe if he have any, and not at any other Houſe in the Pariſh; but Impriſonment without fraud, or removing for health without fraud, or not having a Houſe upon his glebe, excuſes his reſidence for the time; for the words of the Statute are (*That he that wilfully abſents himſelf;*) So if any Parſon, Vicar, *&c.* ſhall be in the King's ſervice beyond Sea, or in any Pilgrimage, or ſhall without fraud abide in any Univerſity within this Realm to ſtudy, or is a Chaplain qualified within this *Stat.* to have Plurality of Benefices, or the *Chaplains of any of the Judges of the King's Bench, or Common Pleas, Chancellor or chief Baron of the Exchequer, of the King's Attorney and Solicitor, and the Chaplains of the Chancellor,* Co. 6. 21. b. *Who may be non-Reſidents.* 25 H. 8. cap. 16.

33 H.8.cap. 28. *ſellor of the Dutchy of* Lancaſter, *of the Augmentations, Firſt-fruit and Tenths, of the Maſter of the Wards, the Surveyer general, of the Treaſurer of the Chamber, and Augmentations, and Groome of the Stool, whilſt ſuch Chaplains abide, and are attendant in the Houſeholds of their Maſters;*

21 H.8.cap.13. *and the Maſter of the Rolls, the Dean of the Arches, and the Chancellor, and Commiſſaries of Arch-Biſhops, and Biſhops, and the twelve Maſters of the Chancery ſo long as they ſhall continue in their places, may be non-reſident: but the Chaplains of the Chancellor of the Dutchy, Augmentations,*

33 H. 8.cap. 28. *Firſt-fruits, Maſter of the Wards, Surveyer General, Treaſurer of the Chamber, and Augmentations, and Groom of the Stool, are to be reſident twice in a year*

9 E.2.cap.8. *at leaſt, eight days at each time: And the*

21 H.8.cap.13. *King may give Licenſe to any of his own Chaplains to be non-reſident: And any Eccleſiaſtical Perſon to attend any Suit in the Chancery or Star-Chamber without fraud may be non-reſident for ſo long time,*

Maſters die, &c. *&c.*

Co. 4. 119. a. But if a Chaplain be qualified in reſpect of his Service to have a plurality, and his Lord or Maſter die, be attaint of Treaſon, Felony, or removed from his place, it will not ſerve the Chaplain's turn to be reſident upon one of his Livings without the King's ſpecial Licenſe with a *non obſtante.*

But

But Biſhops, and Arch-Biſhops are not within this Law, but not exempt from this duty; there being ſeveral Canons that require it: and Biſhops may be compelled hereunto by Eccleſiaſtical cenſures by their Superiors; and the King may compel them by ſeizing their temporalties: a notable precedent whereof we have in the the time of *H.* 3. When Popery was at higheſt, and the King not lookt upon as head of the Church; yet that King ſent his Writ Mandatory to the Biſhop of *Hereford* to be attendant upon his Biſhoprick, otherwiſe he would ſeize of all his Temporalties. *Biſhops reſidence required.* 1 Inſt. 25.

And now I have done with non-reſidence one of the Peſts of the Church; I will in the next place ſhew what Dilapidations are; and the ſeveral ways the ſame are puniſhable, this being often the effect and fruit of *Non-reſidence*.

CHAP.

CHAP. VIII.

Shews what Dilapidation is, and in what manner puniſhable, and what remedies the Succeſſer hath.

Dilapidations what.

A Dilapidation is the pulling down or deſtroying in any manner any of the Houſes or Buildings belonging to a Spiritual Living, or the Chauncel, or ſuffering them to run into ruin or decay; or waſting, and deſtroying the Woods of the Church; or committing, or ſuffering any wilful waſte in or upon the inheritance of the Church. And certainly there can be nothing worſe becoming the dignity of a Clergy-Man than non-reſidence and dilapidations, which for the moſt part go hand in hand. I wiſh our Church had not too much reaſon to complain of both. There hath been divers Canons of the Church made againſt this crime, as I may juſtly call it; but as in others, ſo in this, I ſhall confine my ſelf to our own Provincials: and I find in a Provintial Council or Synod held under *Edmund* Arch-Biſhop of *Canterbury*, in the Year of our Lord 1234. which was as I take it, about the 18*th* Year of *H.* 3. a Canon to this effect.

Si Rector alicujus Eccleſiæ decedens domus

mus Eccleſiæ deliquerit diruta, de bonis ſuis Eccleſiaſticis tanta portio deducatur, quæ ſufficiat ad reparandum hæc, & alios defectus Eccleſiæ ſupplendos. Idem ſtatuimus circa illos Vicarios, qui ſolvendo modicam penſionem omnes Eccleſiæ habent proventus: nam cum ad præmiſſa teneatur talis portio deducta ſatis poterit & debet inter debita computari; Semper tamen rationabilis conſideratio ſit habenda ad facultates Eccleſiæ, cum hæc portio fuerit habenda.

Canon againſt Dilapidations. Lindwood. Chap. Si Rector alicujus Eccleſiæ.

Now if it be demanded what Houſes are meant within this Canon, the Gloſs tells you, *ut puta manſum Rectoriæ vicariæ & alia Edificia quæcunque, quorum Edificatio ſive reparatio ſpectat ad ipſum Rectorem.*

By the Letter of this Canon the Rector is to repair the whole Church; but by the Cuſtom of *England* the Owners of the Houſes and Lands in every Pariſh are bound to repair the Body of the Church, and the Rector only the Chauncel; unleſs by particular cuſtom it hath been otherwiſe: And in this point the Common Law is kinder to the Parſons, Vicars, &c. than the Canon-Law: and the Common Law being here to be preferred annuls that part of the Canon: and the Gloſs upon the words *defecti* Eccleſiæ add, *Hæc litera poteſt intelligi de defectibus Eccleſiæ, quæ pertinent ad curatum ipſius Eccleſiæ in ſolidum ſic, quod non pertineant ad alios, ut puta, in Cancella, & aliis ad onus Rectoris*

Co. 5 67. Cro. Eliz. 659. Not to repair the Church but Chauncel. 2 Inſt. 653. A Canon for relief againſt Dilapidations.

ris de jure vel consuetudine spectantibus.

Verba Ecclesiastica.

But this Canon seems only to affect the Ecclesiastical goods: and what those might be deserves the judgment of the Glos; which tells you they are such as *jure & nomine Ecclesiæ obvenientibus; talia enim bona sunt per viam tacitæ hypothecæ ad reparationem hujusmodi faciendam obligata.*

And if the goods of the Church shall not suffice, then the Glos tells us, *Si Rector bona Ecclesiastica expenderit in melioratione patrimonii sui, vel si propter nimiam diligentiam propriorum negotiorum neglexerit negotia Ecclesiæ procurare, Et sic Ecclesia sit dampnum passa; tenetur satisfacere de bonis suis patrimonialibus, si quæ habuerit.* But there has been made a further question, whether satisfaction for dilapidations should be preferred in payment before Debts and Legacies: And as the Common Law prefers the payment of Debts before dammage for Dilapidations; So the Ecclesiastical Law prefers the dammage for Dilapidations before the payment of Legacies; to which hear what the Glos says: *Si Legatarii tanquam Creditores petant legata sibi relicta, & Prælatus petat sumptus reparationis Edificiorum Ecclesiæ; talis Prælatus debet præferre cæteris Legatariis:* and gives this reason. *Nam Legata solvi non debent nisi prius deducto ære alieno.* So that the Ecclesiastical Law agrees with that

the Common Law in this, that Debts are to be preferred before Legacies.

The next thing considerable is, what repairs are requirable in this case, which is answered by the Gloss. *Et intellige hanc reparationem fieri debere secundum exigentiam & qualitatem rei reparandæ*, &c. *Verbo reparand. hæc.*

Thus far I have followed the Canon and Gloss thereupon: Now in the next place we will shew you what we have relating to this matter amongst the Laws and Statutes of this Realm.

And first, I find that at a Parliament at *Carlisle* in the 35*th* Year of *Edward* the first a great complaint was made against *Anthony*, then Bishop of *Durham*, for waste and destruction of the woods belonging to his Bishoprick by gift sale and otherwise, and for erecting forges of Iron and Lead, and making Charcoals of the Wood to be spent in their Iron and Lead works, to the disinheritance and impoverishing of his Church, and in prejudice of the King and his Crown, and of the Chapter of *Durham*. To which the answer is, *Inhibetur per Breve de Cancellaria Episcopo & ministris suis, ne faciant vastum de contentis in petitione.* *Waste by Bishops.* Co 11.49.2. *Cause of deprivation.*

By which it appears, that if a Bishop or any other Clergy-Man do waste upon the Woods or Lands of his Church, that a prohibition may be sued in Chancery to prohibit him; for *Ecclesia est infra ætatem* *M.23. Ei inter adjudicat coram Rege Huntsf. 83.*

&

& in cuſtodia Domini Regis, qui tenetur jura & hæreditates ejuſdem manu tenere & defendere.

Rot. Patrum 14 H. 3. m. 8. And the Arch-Biſhop of *Dublyn* was fined 300. Marks for the diſaforreſting a Forreſt belonging to his Arch-Biſhoprick.

And it ſeems by ſeveral Books of the Common Law, that in caſe a Biſhop, Abbot, Prior, &c. waſte the Lands, Woods, or Houſes of his Church, he may be depoſed or deprived by his Superior: ſo that it appears clearly, that the fault in this caſe lies heavy upon thoſe that have the Viſitation and Superiority, that they do not take care againſt the waſting and deſtruction of the Buildings, Houſes, Woods, &c. of the Church; and that the Succeſſors ſhould not be put to ſeek remedy againſt Executors and Adminiſtrators, who are too active in finding ſhifts to avoid their actions, to avoid which there is a good Law made in the thirteenth Year of Queen *Elizabeth* to this effect.

20 H. 6. 46. a.
2 H. 4. 3. b.
Co. 11. 94 b.
29 E. 3. 16. a.
9 E. 4. 34. a.

Statute againſt fraudulent Conveyances. Stat. 13 Eliz. cap. 2.

That if any Parſon, Vicar, &c. ſhall make any conveyance of his goods to defraud his Succeſſor of his remedy, the like Suit is given in the Spiritual Court againſt the Grantee, as the Succeſſor ſhould have had againſt the Executors or Adminiſtrators of the Predeceſſors.

But

But this Act gives no remedy at Common Law, becauſe by another Act made at the ſame Parliament *all ſuch Grants to defraud any Perſon or Perſons of their juſt actions are made void.* Stat. 13. El. c. 5.

So that the Plaintiff has equal remedy in both caſes: Suits for Dilapidations are moſt properly and naturally to be ſued in the Spiritual Courts; and if any prohibition ſhould be granted, the ſame ought to be ſuperſeded by a conſultation; but this is intended where the Suit is grounded upon the Canon-Law. Fitz. N.B. 51. f.

Action upon the Caſe at Law for Dilapidations.

But the Succeſſor may upon the Cuſtom of *England* have a ſpecial action upon the caſe againſt the Dilapidator, his Executors or Adminiſtrators, whereof there are multitudes of precedents even in the time of Popery, whereof the Reader has a taſte in the margent: By all which it appears, that by the Cuſtom of *England*, which is the Common Law; *omnes & ſinguli Prebendarii, Rectores, Vicarii, Regni Angliæ pro tempore exiſtentes, omnes & ſingulas domos & Edificia Prebendorum, Rectoriorum & Vicariarum ſuorum reparare & ſuſtentare, & ea Succeſſoribus ſuis reparata & ſuſtentata dimittere teneantur. Et ſi hujuſmodi Prebendarii, Rectores & Vicarii domus & Edificia hujuſmodi Succeſſoribus ſuis Sic, ut præmittatur, reparata & ſuſtentata non dimiſerunt & deliquerunt; ſed ea irreparata & dilapidata permiſerunt, Execu-*

T. 8. H. 7. ro. 69. B. R. T. 18. H. 7. ro. 69. C. B. P. 12 and 13 H. 8. rot. 126. C. B. H. 15 H. 8. ro. 306 C. B. in 12 H. 8. ro. 730. C. B. H. 15. Jac. ro. 474, &c.

The Cuſtom upon which the Action is grounded.

Executores ſive Adminiſtratores bonorum & catallorum talium Prebendariorum, Rectorum & Vicariorum, poſt eorum mortem de bonis & catallis decedentium Succeſſoribus talium Prebendariorum, Rectorum & Vicariorum, tantam pecuniæ ſummam quantam pro neceſſaria reparatione & edificatione hujuſmodi domorum & Edificiorum expendi aut ſolvi ſufficiet, ſatisfacere teneantur.

And upon this Cuſtom actions of the caſe have been frequently brought, both antiently, and of later times, and dammages recovered.

Stat. 14. El. c. 11. And note, that by a Statute made in the fourteenth Year of Queen *Elizabeth* *it is expreſly enacted, that all the Moneys and Dammages that ſhall be recovered for Dilapidations are to be expended and laid out, in, and about the repair of the Houſes, &c. dilapidated, wherein the Viſitors of thoſe Churches ought to take care.*

35 E. 1. It will not be altogether improper to conclude this Chapter with the *Stat.* of 35 *Eliz.* intitled, *Ne Rectores proſternant arbores in Cæmiterio*; whereby it is inacted, or rather the Common Law declared to be in theſe words.

Againſt cutting the trees in the Church-yard. *We do prohibit the Perſons of the Church, that they do not preſume to fell them (viz. the trees in the Church-yard) down unadviſedly, but when the Chauncel of the Church wants*

wants neceſſary Reparations: nither ſhall they be converted to any other uſe, unleſs the body of the Church do want repair, in which Caſe the Parſons of their Charity ſhall do well to relieve the Pariſhioners with beſtowing upon them the ſame trees, which we will not command to be done, but we will commend it when it is done.

By this Law it appears, that the Church-yard and the ſoyl thereof is in the Parſon, and by conſequence the trees are in the Parſon or Rector, that grow therein. But becauſe the Trees that grow there are for the moſt part planted there for the ſhelter and ornament of the Church from Tempeſts and Storms; therefore the Parliament has granted a Prohibition in this Caſe againſt the Rectors and Parſons of Churches, that they ſhould not cut down theſe trees for any other uſe, but the neceſſary repairs of the Church and Chauncel, which in truth was no more than what the Common Law enjoyned: for if the Rector had gone about to have cut them down for any other uſe, the Patron might have had a Prohibition; but now I conceive the Rector or Impropriator, that cuts down any Trees growing in the Church-yard for any other cauſe than for the repair of the Church or Chauncel, may be indicted and fined upon this Statute at the Common Law.

If the Bishops and Arch-deacons in their Visitations would take care, these Dilapidations might easily be avoided, which is a great dishonour to the Clergy, and cannot be pleasing to God Almighty or good men: And the Canon enjoyns the Arch-deacons and other Officials, *ut in visitationibus Ecclesiarum faciendis diligentem exhibeant considerationem ad fabricam Ecclesiæ & maxime cancell', si forte indigeant reparatione, & si quos invenerint defectus hujusmodi, certum sub pœna præfigant terminum infra quem emendentur vel suppleantur*, &c.

Cap. Archidiaconi & infra.

CHAP.

CHAP. IX.

The ninth Chapter shews for what Causes a Parson, Vicar, &c. may be deprived by any Statute-Law; and what matters are allowed for good causes of Deprivation at the Common Law.

DEprivation or Deposition is, where a man by any Statute-Law, or by any judicial Sentence Ecclesiastical, that hath proper Jurisdiction, is made incapable to hold or enjoy his Parsonage, Vicarage, or other spiritual promotion, or dignity: and the causes of such Deprivation or Deposition are properly and naturally determinable by the Ecclesiastical Laws of this Realm. But because generally there are Estates of Freehold dependant upon these promotions and dignities, and annexed to them inseparably, which rest at the sole determination of the Common Law; the Courts of Common Law do sometimes inspect and regulate the proceedings of the Ecclesiastical Courts; and where they proceed against the Rules of common Law, they frequently prohibit them: I have therefore thought fit to shew what causes of Deprivation or Deposition

Deprivation and Deposition quid.

Where determinable.

have been allowed and approved of by the Judges and Courts of the Common Law, or by any of the Statutes of this Realm. But there are many more causes of Deprivation by the Canons and Laws Ecclesiastical, which being out of my profession I shall not presume to discourse of.

Co. 11. 49. b. *Waste and Dilapidation cause of Deprivation, &c.*

1. The Dilapidating and wasting the woods and houses and other buildings of the Church is held a good Cause of Deprivation or Deposition, as appears in the precedent Chapter and the Books there vouched in the margent.

Simony cause of Deprivation.

2. The Clerk that obtains any preferment in the Church by any Simoniacal Contract or agreement may be deprived by his Ordinary, &c. as appears at large in the fifth Chapter here before upon that Subject.

1 El. cap. 2. Stat. 14. Car. 2. 4. *To use other Forms of Prayer, the second offence.*

3. *That if any Person, &c. shall refuse to use the book of Common Prayer or administer the Sacraments in the order there prescribed, or shall wilfully and obstinately standing in the same use any other Rite or Ceremony order form or manner of Celebrating the Lord's Supper, or other open Prayers, or shall preach declare or speak any thing in derogation thereof or depraving the same, or any thing therein contained, and having formerly been convicted for the like offence, shall upon his second Conviction be deprived* ipso facto.

4. *If*

4. *If any Parson, Vicar, &c. shall not within two months next after Induction upon some Lord's day openly publickly and solemnly read the Morning and Evening Prayers appointed to be read the same day according to the Book of Common Prayer, and after such reading shall not openly and publickly before the Congregation there assembled declare his unfeigned assent and consent to the use of all the things therein contained in such manner as is directed before here in the seventh Chapter; and if there be any lawful Impediment, then if he do not do the same within one Month after the impediment removed; such Parson, Vicar, &c. shall be deprived* ipso facto.

Stat. 14. Car. 2. cap. 4. *Neglecting to read Prayers within two months after Induction.*

5. *If any person, which shall have any Ecclesiastical preferment, shall advisely maintain or affirm directly any Doctrine contrary or repugnant to the 39 Articles of Religion, and being convented before the Bishop of the Diocess or Ordinary or before the high Commissioners shall persist therein and not revoke his Error, or after such Revocation shall eftsoon affirm such untrue Doctrine, he may be deprived.*

13 El. cap. 12. *To maintain any doctrine against the 39. Art. of Religion.*

5 B. 2. tit. Trial 54. *Miscreant, Infidelt, Schismaticks and Hereticks Depriv. f. 3.*

6. If any person shall obtain a preferment in the Church, which is a * Miscreant †, Infidel, Schismatick or Heretick, he may be deprived.

*a Misbeliever. † an Atheist, &c.

38 E. 3. 2. b. Dyer 8 and 9 p. 254. Co. 558. a. Dyer. 293. p. 1, and 2.

7. So if one be made a Parson, Vicar, &c. that is not of free Condition, but a Villain, or that is illiterate and not able

Slave, Villain, illiterate and criminous person may be deprived.

to perform his duty, or that is guilty of any heinous Crime, as Murder, Manslaughter, Perjury, Forgery, or that is *merè Laicus* and not in holy Orders, he may be deprived.

Allen verſ. Naſh. P. 13. Car. 1. B R.

8. A Parſon, Vicar, &c. may be deprived for being diſobedient and incorrigible to their Ordinary, &c.

Diſobedience to Ordinary cauſe of Depriv.

Cro. Jac. 37. *Non-Conformity.*

9. And it was reſolved by all the Judges of *England* 2 *Jacob.* That non-conformity was a good Cauſe of Deprivation, and it was declared by them all, that in caſe any Canons were made by the Clergy for the good Government of the Church, and approved and confirmed by the King (as they ought) that the obſtinate diſobeying of them was a juſt cauſe of Deprivation.

Quod nota.

2 H. 4. 37. *Taking a ſecond Benefice.*

10. If any Parſon, Vicar, &c. have one Benefice with Cure of Souls, and take another incompatible without a faculty and diſpenſation, it is a juſt cauſe of Deprivation.

Dyer 133. p. 1. *Prieſt to marry was cauſe of Deprivation.*

11. In the time of Popery it was cauſe of Deprivation for a Prieſt to marry, but not to have two or three Concubines, as they called them, but more of this hereafter.

Co. 11. 98. b. 2 H. 4. 3. 9 E. 4. 34. 20 H. 6. 36. 29 E. 3. 16.

12. Dilapidation, Deſtruction of woods, &c. or Alienation of Land belonging to the Church by any Biſhop, Abbot, Prior, Parſon, Vicar, &c. have been held and adjudged good Cauſes of Deprivation, and

it

it is very fit it were practiſed, where after monition there is not Reformation.

Dilapidation, Waſte, Alienation of the Lands cauſe of Deprivation.

There may be a queſtion ſtarted, what ſhall be intended by the words deprived *ipſo facto*; whether by thoſe words the Church immediately ſhall become void by the fact done, or not till Conviction or Sentence declaratory. The words *ipſo facto* are of late time crept into acts of Parliament, as that for ſtriking with a weapon in a Church-yard, the Party ſhall *ipſo facto* be excommunicate: and in that Caſe it is made a *quere* in *Dyer*; and having not met with any Reſolution in the point, I ſhall not preſume to give my opinion in the Caſe, but leave it to the determination of the learned: But in that Caſe by the Canoniſt *requiritur Sententia declaratoria.*

Deprivation ipſo facto.

Dyer 275. b. p. 48.

Quere.

I muſt confeſs, in this Chapter I may ſeem to tranſgreſs upon the Canoniſts and Civilians as well as in ſome other, but I have gone no further upon this Subject, than what I have met with in our own Books, and I muſt agree, that the Eccleſiaſtical Courts have the ſole Juriſdiction in all Cauſes of Deprivation, Depoſitions Reſignations, *&c.* And yet the Judges of the Common Law have power to correct their proceedings, if they ſhall proceed againſt the Rules of the Common Law, which is the reaſon we meet with theſe things in our Books, and

Lindwood c. *quia incontinentiæ vitium verb.* ipſo facto.

it may be ſome advantage to the *Civilians* to know, how far the Common Law approves of their proceedings: and having ſaid what I have to ſay upon this Subject, I ſhall proceed next to ſhew, what Leaſes Parſons, Vicars and other Eccleſiaſticks may make at this day of the Glebes, Tithes, Farms, &c. and within the danger of what Statutes they may fall.

CHAP.

CHAP. X.

The Tenth Chapter shews, what Leases Parsons, Vicars and other Ecclesiastical Persons may make of their Glebe, Tithes, Farms, &c. and what Farms they may take, and within the danger of what Statutes they may fall.

What Leases Clergy-men may make.

HAving undertaken this Work chiefly in favour of the Parsons and Vicars, I designed to have medled with no other Orders of the Church but those only; but having in many other things been enforced to intermingle the concerns of other Orders with those of the Parsons and Vicars, I shall beg the Readers pardon, that in this Chapter, where I am to treat of the Leases which may be made by Parsons and Vicars, I likewise take in all other Orders of the Church with the Colledges; the Learning concerning Leases being of use and necessary for all people to know, and which I shall in this Chapter put into as good a method as the subject matter will permit.

And because the Learning of these Leases will depend upon several Statutes, it will not be amiss first to examine what

Leases

Leaſes or Alienations the ſeveral perſons we have to do with in this Chapter might have made at Common Law before the Statutes, and then to conſider where, or in what manner, the ſeveral Statutes have inlarged, abridged or reſtrained their power at Common Law.

At Common Law. 1 Inſt. 45. a.

And firſt, at the Common Law no Biſhop, Abbot, Prior, Dean, Prebend, or other ſingle Corporation, could make any Alienation or Leaſe to bind their Succeſſors without the confirmation of their Chapter, Covent, &c.

The enabling Act of 32 H. 8. c. 28.

The firſt Statute that made any alteration in theſe caſes was the *Stat.* of 32 *H.* 8. which is comonly called the enabling Statute, whereby it is enacted,

That all Leaſes then after to be made of any Manners, Lands, Tenements or Hereditaments, by writing under Hand and Seal for term of years, or for term of the life, by any Perſon or Perſons of the full age of 21 years, having any eſtate of Inheritance either in Fee-ſimple, or Fee-tail, in their own rights, or in the right of their Churches, &c. ſhall be good and effectual in the Law againſt the Leaſors, their Wives, Heirs, and Succeſſors.

Provided that Act ſhould not extend to any Leaſe of any Manners, &c. Where any old Leaſe ſhould be in being, unleſs the ſame expire be ſurrendred or ended within one year after the making of ſuch new Leaſe, nor

ſhall

ſhall extend to any Grant to be made of any Reverſion of any Mannors, &c. nor to any Leaſe of any Mannors, &c. which have not moſt commonly been letten to Farm or occupied by the Farmers thereof by the ſpace of twenty years next before ſuch Leaſe thereof made; nor to any Leaſe to be made without impeachment of waſte, or to any Leaſe to be made above the number of three Lives or twenty years at the moſt from the day of the making thereof, and that upon the making of every ſuch Leaſe there be reſerved yearly during the ſaid Leaſe due and payable to the ſaid Leaſors their Heirs and Succeſſors, to whom the reverſion ſhall appertain &c. ſo much yearly Farm or Rent or more, as hath moſt accuſtomably been yielden and paid for the ſaid Mannors, &c. ſo to be letten within twenty years next before the Leaſe thereof made, &c.

Provided this Act ſhould not extend to give any Liberty or power to any Parſon, Vicar, &c. to make any Leaſe or Grant of any of their Meſſuages, Lands, Tithes, &c. or in any other manner than they ſhould or might have done before the making of the ſaid Act.

So now, where before the making of this Act no Arch-Biſhop, Biſhop, Arch-Deacon, Dean or Prebend could have made any Leaſe to have bound his Succeſſors without the confirmation and conſent of their Chapters, &c. as aforeſaid:

Now

What qualities ſuch Leaſes muſt have.

Now by this Act they are enabled to make Leaſes for three Lives or one and twenty years without any confirmation at all with theſe qualifications.

Muſt be in writing indented.

1. Such Leaſe muſt be made by writing Indented, and not by parol or deed poll.

Muſt begin from the making or day of making.

2. It muſt be made to begin from the making or day of the making of ſuch Leaſe.

Old Leaſe muſt expire with a year.
Co. 5. 2. b.

3. If there be any old Leaſe in being at the time of the making of ſuch Leaſe, it muſt expire, be ſurrendred or ended within a Year after the making of ſuch new Leaſe, and ſuch ſurrender muſt be abſolute and not upon condition.

Muſt not be a double Leaſe.

4. Fourthly, there muſt not be a double Leaſe in being at one and the ſame time, the one for Years, and the other for Lives.

Of what things ſuch Leaſe may be.
Co. 5. 3. a.
More 778.

5. Such Leaſe muſt be of Lands manurable or corporeal, which are neceſſary to be letten, and out of which a Rent may be reſerved, and not of things that lie merely in Grant; as Fairs, Markets, Tithes, Tolls, Franchiſes, Advowſons, &c.

Of Lands uſually letten.

6. Such Leaſe muſt be of Lands, &c. which have moſt commonly been letten to Farm, or occupied by the Farmers thereof for the more part of twenty years before the making of ſuch Leaſe: So if they have been ſo let for eleven years

years within the twenty years next before the making of the new Lease, it suffices: and a letting to Farm by Copy of Court-Roll is a sufficient letting to Farm within this Statute to enable the making of such new Lease. Co. 6. 37. b.

7. There must be reserved upon every such Lease, and payable during the continuance thereof to the Leasor his Successors, &c. so much Farm or Rent as hath most accustomably been yielded and paid for the Land so demised within twenty years next before such Lease made: so that it sufficeth, if the yearly Rent or Farm be reserved, though Herriots and other casual services be omitted; so if a greater Rent than formerly be reserved, it sufficeth. But if Lands usually letten be demised with any other Lands, &c. though a Rent be reserved that exceeds the value of those Lands and the old Rent; yet such Lease is not good against the Successor within this Law. But if the Rent were formerly reserved to be paid at four several days, and by the new Lease be reserved to be paid all at one, so the whole Rent be reserved yearly, it is well enough. *The accustomed Rent must be reserved.* Co. 6. 37. b. Ibid. Co. 5. 5. b. Co. 5. 37 b.

8. Lastly, such Lease must not be without impeachment of waste, and therefore a Lease to one for life, remainder to another for life, remainder to a third for life is not good against the Successor, though but *Such Lease must not be without Impeachment of Waste.*

but for three Lives, becauſe the remainders make the preſent Tenants diſpuniſhable for waſte for the time.

Parſons and Vicars excepted.

But Parſons and Vicars being excepted in this enabling Law are left as they were at the Common Law; ſo that they could make no Leaſe to bind the Succeſſor without the confirmation of the Biſhop and Patron, till the *Stat.* of 13. *Eliz.* which we ſhall ſpeak of hereafter.

Co. 3 70. b. *Leaſe for years determinable upon Lives.*

And note that it hath been held, that a Leaſe for ninety nine years, if one two or three Lives ſo long live, hath been held good within this Statute.

But this Act, as appears by what hath been ſaid, conferred a new power upon ſingle Corporations; but did not in any thing reſtrain their antient power in making long Leaſes and Alienations of their very Scites, Demeſns, &c. with confirmations as aforeſaid, which was a great prejudice to the Church in general, a means of Dilapidations, and a great hindrance of hoſpitality: and therefore,

1 Eliz. c 19. More 107. *Biſhops reſtrained.*

In the firſt Year of Queen Eliz. *it was enacted, that all Gifts Grants Feoffments Fines and other Conveyances and Eſtates from the firſt day of that preſent Parliament to be had made done or ſuffered by any Arch-Biſhop or Biſhop of any Honors Caſtles Mannors Lands Tenements or other Hereditaments, being part of the poſſeſſions of his Arch-Biſhoprick or Biſhoprick, or united appertain-*

pertaining or belonging to any the ſame Arch-Biſhopricks or Biſhopricks, to any Perſon or Perſons bodies politick or incorporate (other than the Queens Majeſty her Heirs and Succeſſors) whereby any Eſtate or Eſtates ſhould or might paſs from the ſaid Arch-Biſhops or Biſhops or any of them, other than for the term of twenty one years or three Lives from any ſuch time as any ſuch Leaſe Grant or aſſurance ſhall begin, and whereupon the old accuſtomed yearly Rent or more ſhall be reſerved and payable yearly during the ſaid term of twenty one years or three Lives, ſhall be utterly void and of no effect to all intents conſtructions and purpoſes, any Law cuſtom or uſage to the contrary thereof in any wiſe notwithſtanding.

Note, the exception, which gives or rather reſerves the power to grant, &c. to the Queen, &c. was made void by a Statute made 1 *Jac.* 1 Jacobi c. 3.

Leaſes in other Forms not void but voidable.

And note alſo, that though this Statute enacts, that all Leaſes made in any other form ſhall be void and of none effect to all intents and purpoſes; yet it has been adjudged, that is only to be intended as againſt the Succeſſors, and that Leaſes made in other forms ſhall be good notwithſtanding againſt the party himſelf that makes them, and may be affirmed by the Succeſſor by the receipt of the Rent reſerved thereupon. Smallwood & Sale verſ. le Eveſq. Lich. & alios P. 31. El. ro. 216. Co. 3. 59. Cro. Jac. 95.

And

1 Eliz. *A private Act.* Co. 4. 76. Co. 5. 2. b. Cro. El. 874.

And note, this is a private Act of Parliament, that must in all cases be pleaded, and cannot be given in evidence.

And note also, that though this Statute do not restrain demising of any Lands not formerly demised, yet it does it by implication; for the accustomable Rent must be reserved, and unless accustomable let, there cannot be an accustomable Rent; and Leases within this Statute must have all the restrictions in that of 32. *H.* 8. before-mentioned.

Of what things such Leases may be made. Co 5. 3 a.

And it must be of things manurable, as hath been said, out of which a Rent may be reserved: but some are of opinion that Tithes or things not manurable may be demised for twenty one years, because an Action of debt will lye upon the Contract: and so it was adjudged, as a learned Serjeant at Law inform'd me, in the case of the Precentor of *Paul's* about 17. *Jacobi*; and that the Successor shall have an Action of debt upon this Contract by the *Stat.* of 21 *H.* 8. *cap.* 28.

More 778. *Sir* Timothy Tourneur, *Serjeant le Roy.*

1 Inst. 45. a. *Concurrent Leases.*

Upon this Statute and the former it hath been held, that Arch-Bishops and Bishops may with confirmation of the Dean and Chapter make concurrent Leases, that is, notwithstanding there be a Lease in being for twenty one years, they may make a new Lease of the same Lands to another for twenty one years from the making thereof; and this being confirmed

as

as aforeſaid ſhall bind the Succeſſor, the other things being obſerved in it.

And Sir *Edward Cook* is of opinion, that like concurrent Leaſes may be made by Deans Prebends, &c. with confirmation: but ſome learned men are not ſatisfied herein, becauſe by theſe concurrent Leaſes the Succeſſor loſes his remedy for his Rent by diſtreſs during the former term, and the Tenant may be inſolvent as to an Action of debt. 1 Inſt. 45. a.

The next reſtrictive Law is that of 13. *Eliz.* whereby it is enacted, *That from thenceforth all Leaſes Gifts Grants Feoffments Conveyances or Eſtates to be made had done or ſuffered by the Maſters and Fellows of any Colledge, Dean and Chapter of any Cathedral or Collegiate Church, Maſter or Guardian of any Hoſpital Parſon, Vicar or any other having a Spiritual or Eccleſiaſtical Living, or any Houſes Lands Tithes Tenements or other Hereditaments being any part of the poſſeſſions of any ſuch Colledge, &c. or any wiſe appertaining or belonging to the ſame or any of them, to any Perſon or Perſons Bodies, &c. (other than for the term of twenty one Years or three Lives from the time as any ſuch Leaſe or Grant ſhall be made or granted, whereupon the accuſtomed yearly Rent or more ſhall be reſerved and payable during the ſaid term) ſhall be utterly void, &c.* 13 El. cap. 10. *The Reſtrictive Law againſt Leaſes of Deans, Prebends, &c.*

Co. 5. 14. b. The penning of this Act, and that of 1 *Eliz.* beforementioned being in effect the same in substance, the construction is the same in effect, but in this Act there was no saving of Grants to the King, and therefore this Act being for the publick good had restrained other Grants to him not warranted by this *Stat.* though 1 *Jac. cap.* 3. had never been made.

Parsons and Vicars restrained by this Law.

And here note, that as the Parsons and Vicars had not their power any wise inlarged by the *Stat. of* 32 *H.* 8. So they had no restriction upon them till this act; but from henceforth they are restrained from making any Lease or Grants other then for twenty one years or three Lives with the qualifications above mentioned in the Statutes, and such Leases must be confirmed by the Patron and Ordinary, because excepted in the inabling Statute of 32 *H.* 8. before.

And whereas after the making of this Statute, Heads of Colledges, Deans, Prebends, &c. might have made concurrent Leases, as well as Bishops might; there is a *Proviso* in the Statute of 18 *Eliz.*

18 Eliz. c. 11. *No concurrent Lease, but within three years before the former ends.*

That all Leases then after to be made by any the aforesaid Ecclesiastical Spiritual or Collegiate Persons or others of any of their Ecclesiastical, &c. Lands, &c. whereof any former Lease for years is in being, and not expired, surrendred or ended within three years next after the making of any such new Lease

Leaſe, ſhould be utterly void frustrate and of none effect, any Law, &c.

By this Proviſo, *it ſhould ſeem, the Parliament was of opinion, that concurrent Leaſes might be made, but has by this* Proviſo *ſo reſtrained them, that they cannot be made but within three years before the Determination of the former.*

But Biſhops are conceived not to be comprehended within this *Proviſo*, for though the words are general enough, yet the particulars mentioned before the general words being of an inferiour rank, the general words cannot draw in the more worthy. *Biſhops not in this Act.*

And there is a Proviſion in this Act of 18 Eliz. *That all Bonds and Covenants then after made for the making or renewing of any Leaſe contrary to the intent of that Statute, or of the Statute of* 13 Eliz cap. 10. *ſhould be utterly void.* *Which Bonds and Covenants ſhall be void.*

By a Statute made in the 13*th.* Year of Queen *Elizabeth there is an Act of Parliament made, whereby it is enacted, That no Leaſe made after the* 15th *day of* May *following of any Benefice or Eccleſiaſtical Promotion with Cure, or any part thereof, and not being impropriated, ſhould endure any longer, than while the Leaſor ſhould be ordinarily reſident and ſerving the Cure of ſuch Benefice without abſence above fourſcore days in any one year; but that every ſuch Leaſe* [ſo ſoon as it or any part there- 13 Eliz. c. 20 *Leaſes of Perſons to be void by non-Reſidence.* *These words within the* [] *are repealed by* 14 El. c. 11.

thereof ſhould come to any poſſeſſion above forbidden or] *immediately upon ſuch abſence ſhall ceaſe and be void, and the Incumbent ſo offending ſhall, &c. loſe one years profit of his ſaid Benefice to be diſtributed by the Ordinary to the poor of the Pariſh.*

Charging Perſonages void. *And by the ſame Statute, it is further enacted, That all charging of ſuch Benefices with Cure then after with any penſion, or with any profit out of the ſame to be yielded or taken, other than Rents reſerved upon Leaſes, ſhould be void.*

Where a Perſon may deviſe, and be non-reſident. *But where any Perſon ſhould be qualified to have two Livings, he may deviſe the one of them, where he is not ordinarily reſident, to his Curate only, that ſhall there ſerve the Cure. And ſuch Leaſe ſhall endure no longer than during ſuch Curate's reſidence without abſence above fourty days in any one year.*

14 El. cap. 11. *Leaſes, Bonds, and Covenants to be void.* *And by the 14. of Eliz. it is enacted, That all Leaſes, Bonds, Promiſes and Covenants of and concerning Benefices and Eccleſiaſtical Livings with Cure to be made by any Curate ſhall be of no other or better force, validity or continuance, than if the ſame had been made by the beneficed perſon himſelf, that ſhall demiſe the ſame to ſuch Curate.*

Houſes Incorporations, &c. how to be leaſed. *And by the ſame Statute it is enacted, That the reſtrictive Statute of 13 Eliz. cap. 10. before ſhall not extend to any Grant, Aſſurance or Leaſe of any houſes belonging*

to

to any the perſons,&c. (in the ſaid Stat. of 13.) nor to any grounds to any ſuch houſes appertaining, &c. in any City, Burrough, Town Corporate or Market Town, or the Suburbs of any of them, but that all ſuch houſes and grounds may be granted,demiſed and aſſured,as they might have been before the making of the ſaid Act, ſo always as ſuch houſe being not the Capital,or dwelling houſe uſed for the Habitation of the Parſons, &c. nor have above ten Acres to the ſame.

Provided, That no Leaſe be made by vertue of this Act in reverſion, nor without reſerving the accuſtomed yearly Rent at leaſt, nor for a longer term than for fourty years at moſt, charging the Leaſee with repairs,and no alienation in Fee,unleſs lands of as good yearly value be ſettled,&c.in lieu thereof. *Not to leaſe in reverſion.*

There is likewiſe another Proviſo *in this Act, that all Bonds,Conrracts, Promiſes and Covenants to be made for the ſuffering or permitting any perſon to enjoy any Benefice or Eccleſiaſtical Promotion with Cure, or to take the profits or fruits thereof, other than ſuch Bonds and Covenants as ſhall be made for aſſurance of any Leaſe heretofore made, ſhall be of no other force than Leaſes made by the ſame perſon.* *Bonds, Contracts, Covenants, Promiſes,where to be void.*

And by another Statute made in the 18*th* year of the ſame Queen *Eliz.It is enacted, That after complaint made to the* 18 Eliz.c.11.

Ordinary, and Sentence given upon any offence committed by the Incumbent against the Statute of 13 Eliz. cap. 20. *whereby he shall or ought to lose a years profit of his Benefice,* &c. *That then the Ordinary within two months after such Sentence, and request made by the Churchwardens of the Parish, where,* &c. *or one of them, shall grant the Sequestration of such profits to such Inhabitant or Inhabitants within the same Parish,* &c. *as to him shall seem meet,* &c.

Every Parishioner may take advantage.

And that upon default of the Ordinary, it shall be lawful for every Parishioner, &c. *to retain,* &c. *his Tithes, and for the Church-wardens to enter upon the Glebe-land Rents and Duties of every such Benefice to be imployed to the use of the poor,* &c. *until such time as Sequestration shall be committed by the Ordinary; and then the Church-wardens and Parishioners to accompt to such to whom the Sequestration shall be committed, who is to imploy the whole profits according to the act, upon pain to forfeit the double value of the profits with-holden, to be recovered in the Ecclesiastical Court by the poor of the Parish.*

Having thus briefly for the Readers satisfaction given him a brief Abstract of all the Statutes concerning the Leases of Ecclesiasticks of all kinds, I shall briefly sum them all up, and proceed to take a view of such other Statutes as the Parsons,

ſons, Vicars, &c. are in any manner in danger of.

Upon the whole matter it appears, that Arch-biſhops and Biſhops may make Leaſes for twenty one years, or for one two or three Lives, with the qualifications before mentioned without any Confirmations at all: and they may make concurrent Leaſes for twenty one years upon Leaſes for tweny one years from the making with confirmation of the Dean and Chapter with ſuch qualifications as is aforeſaid, though there be above three years in being of the old Leaſe at the time of the making the new, and where the Biſhop has two Chapters, there the concurrent Leaſe muſt be confirmed by both Chapters; unleſs it be as it was in the Biſhop of *Waterford's* Caſe, which was thus. The Biſhop of *Waterford* had long agoe the Biſhoprick of *Lismore*, and the Chapter united to that of *Waterford*; And in all Grants made of the Lands belonging to *Lismore* that Chapter only confirmed, and all Grants made of the Lands antiently belonging to the Biſhoprick of *Waterford* the Chapter of *Waterford* only confirmed: and becauſe the Union was not extant, all the Judges held the confirmation of the one in the manner aforeſaid was good, for it ſhall be intended, that it was ſo provided for upon the conſolidation; but otherwiſe all the Judges

What Leaſes may be made by Biſhops and Arch-biſhops.

Co. 12. 71. a. b.

Dyer 282. p. 26. held, that both Chapters ought to have confirmed.

Ibid. But if a Biſhop had two Chapters, and one of them ſurrender is ſuſpended or diſſolved, the confirmation of the other ſuffices.

M. 14 and 15 El. There is a Caſe in Mr. Juſtice *Harpur's* Reports, where the Caſe is put, That a Biſhop made a Leaſe 2. *die Maii* confirmed the third day, and ſealed the fourth day of *May*, and held good Leaſe and well confirmed.

Harpur Rep. m. 14 and 15 El. But a Confirmation by the Dean and Chapter after the death of the Biſhop comes too late by *Catlyne*, *Southcoate* and *Windham* againſt *Wray*.

T. 6. El. More 66. But if a Biſhop make ſeveral concurrent Leaſes, and the latter is firſt confirmed, and after the firſt is confirmed; in this Caſe the firſt Leaſe ſhall be preferred, becauſe nothing paſſes by the Confirmation in point of Intereſt but a mere Conſent.

T. 8. Jac. S. Sir *Edw. Dimock's Caſe.* Rolls 1. 477. h. 7. If a Biſhop make a Grant to the King, which is confirmed by the Dean and Chapter before the Grant is inrolled, this is well enough.

Crok El. 141. More 253. But note, that a Biſhop cannot make a concurrent Leaſe for life, though upon a precedent Leaſe for Years; nor a concurrent Leaſe for years, where there is a Leaſe for life in being.

Deans,

Deans Prebendaries Heads of Colledges Masters of Hospitals and other Ecclesiastical Persons mentioned in the Stat. of 13. *Eliz. cap.* 10. may make Leases for 21 Years, or any lesser number of Years, or for one two or three Lives in possession, according to the qualifications abovementioned; and they may make concurrent Leases as Bishops may with confirmations; but they must be within three Years of the determination of the former term by expiration surrender or otherwise: so that in this point the Bishop has the advantage.

Leases by Deans, Prebends, Colledges, &c.

18 Eliz. c. 11.

And though the enabling *Stat.* of 32 *H.* 8. gives power to make Leases to hold from the making, or day of the making; yet the Restrictive *Stat.* of 13 *El.* makes them void, if they be not made to hold from the making, and not from the day of the making; *quod nota*: But the Leases of Bishops and Arch-Bishops are not within that Act, but the Act of *primo* of the Queens; which is, that all Leases should be void, other than for 21 Years or three Lives from the time of the commencement: Note the different pennings.

13 El. c. 10.

Concurrent Leases, and who is to confirm L ases.

And for as much as all concurrent Leases of any Bishop Dean Prebend and Arch-Deacon are to be confirmed, it is convenient to let the Reader know who is to confirm the same; therefore for the Reader's satisfaction he is to know that the

Rolls 1. 481. p. q. r. Dyer 221 p. 18. 357 p. 42. Plow. 528. Dyer 61. p. 30. Co. 5 81. a.

Leases

Leaſes of Biſhops and Arch-Biſhops are to be confirmed by the Dean and Chapter or Deans and Chapters, if there be ſeveral Chapters: Grants made by a Prebend are to be confirmed by the Biſhop Dean and Chapter: the Grants made by Deans are to be confirmed by the Biſhop and Chapter: the Grants made by the Arch-Deacon, by the Biſhop Dean and Chapter: the Grants of Parſons and Vicars, with their Patrons and Ordinaries: and Grants by the Incumbent of a Donative, by the Patron alone.

But if a Parſon make a Leaſe, which is confirmed by the Biſhop only, who is Patron, without the Dean and Chapter which ought to have joyned; it ſhall bind the Succeſſor during the Lives of the Biſhop and Incumbent, although the Biſhop be tranſlated.

But Grants by Parſons Vicars Prebends, *&c.* before induction or inſtallation, *&c.* although confirmed, are not binding to the Succeſſor.

But if the King be Patron of a Prebend, then the King and Dean and Chapter, and not the Biſhop, ought to confirm the Grant.

A Leaſe made by a Prebendary Parſon Vicar, *&c.* may be confirmed for part of the term, if it be for Years, that is, confirm the Land to the Leaſee for ſo many Years of the Term; but if the Term be

Co. 5. 81. a.. Dyer 52 a. b. Cro. El. 472.

be confirmed for part of the Term, it were abſurd and repugnant, and ſhould be good for the whole term: & as ſuch Leaſe may be confirmed for part of the term, ſo it may be for part of the Land.

If a Parſon, &c. make a Grant, which is confirmed by the Patron and Ordinary, and after be deprived; yet the Grant is good. Rolls 1. 476. f. 1, 2.

A Husband ſeized in the right of his Wife of an Advowſon, the Parſon makes a Leaſe warranted by the Statutes before mentioned, and the Biſhop and Husband confirm it; this ſhall not bind the right of the Wife but during the Husband's life, but that the Succeſſor after his death will avoid it, that comes in by the preſentation of the Wife. Rolls 1.479. n. 1.

So if Tenant in tail being Patron confirm the Grant of the Parſon with the Biſhop, this ſhall not bind the Incumbent of the iſſue in tail. Rolls 1.480. n. 2.

If a Uſurper preſent, and confirm the Leaſe of his Incumbent with the Biſhop, & after is removed by *quare Impedit*, &c; this ſhall not bind the Clerk of the true Patron. Rolls 1. 480. n. 4.

If the true Patron grant the next avoidance, and then confirm the grant of the Parſon, who after dies; the Incumbent preſented by him that had the next avoidance ſhal avoid the Leaſe, & his very entry upon the Leaſee avoids the Leaſe for ever. Cro. Car. 582. Rolls 1.480. n. 5.

If the Parſon make a Leaſe to the Patron, which is confirmed by the Biſhop, this is not good; but if the Patron grants Cro. El. 430.

Co. 5. 15. a. grants it over, it amounts to a confirmation.

Rolls 1. 481. p. 1. If a Prebend Parſon or Vicar make a Leaſe, and the Biſhop being Patron confirms it without the Dean and Chapter; yet this ſhall bind the Biſhop and all the Prebends Parſons, *&c.* which he ſhall Collate.

Cro. El. 18. If a Parſon had made a Leaſe for above 21 Years before the Statutes of 13. and 14 *Eliz.* which had been confirmed after, this had been good, and not within the reſtriction of thoſe Laws.

1 Leon. 233. Quære. If a Parſon Leaſes where there is two Patrons, both ought to confirm as ſhould ſeem.

Cro. Car. 38. If the Patron and a ſucceeding Biſhop confirm the Leaſe of the Parſon, it is good enough.

Dyer 106. p. 24. Quære. A Prebend made a Leaſe, reciting that it was with the conſent of the Biſhop, who ſigned and ſealed the Leaſe to the Leaſee, but was no party to the Deed, *quere* if good.

And having ſaid thus much of confirmations, let us ſee, what Leaſes a Parſon or Vicar may make at this day, conſidering all the beforementioned Statutes.

Leaſes by Parſons and Vicars. And firſt, it is to be obſerved, that at and by the Common Law a Parſon or Vicar might have granted or charged his Glebe in Fee-ſimple with the confirmation of the Patron and Biſhop; but being excepted

cepted out of the inabling Statute of 32 H. 8. he could never make any Leaſe or Grant to bind their Succeſſors, without ſuch confirmation; then by the Statute of 13 *Eliz. Parſons and Vicars are reſtrained: So that they cannot grant but for* 21 *Years or three Lives from the making of ſuch Leaſe, and not from the day of the making, as is before obſerved*; *and theſe Leaſes and Grants muſt be with the confirmation of the Patron and Ordinary with all the qualifications expreſſed in the beginning of this Chapter.* 32 H.8.c.28. 13 El. cap.10.

And it ſhould ſeem, they may make concurrent Leaſes, as Deans Prebends, &c. may do, within three Years of the end of the former Leaſes.

It has been a queſtion whether a Parſon or Vicar at this day can make any Leaſe at all to bind his Succeſſor: for by the Statute of 13 *Eliz. Chap.* 20. *it is enacted, that Leaſes of Parſons Vicars*, &c. *that have Cure of Souls ſhall endure no longer, than they ſhall be ordinarily reſident and ſerve the Cure*; *and that if ſuch Parſon*, &c. *ſhall be abſent from their Cure above* 80 *days in one Year, that then ſuch Leaſe ſhall ceaſe and be void.* Now when a Parſon dies, and 80 days incurs, and this being a Law for the advancement of Religion and Hoſpitality, to avoid Dilapidations, ſhall have an equitable conſtruction for the preſerring of theſe ends: therefore ſome 13 El. cap.20.

have

have held that the death of the Parson Vicar, &c. after 80 days have incurred from their deaths, shall make all their Leases and Grants void, though never so sufficiently confirmed; and rely very much upon the preamble of the Statute, which begins, *That the Livings appointed for Ecclesiastical Ministers may not by corrupt and indirect dealings be transferred to others uses, Be it enacted*, &c. But by these Leases it is apparent the profits are converted to other uses, &c. But others have held the contrary Opinion [illegible] case such absence is not voluntary but by the Act of God, and regularly these cannot be said absent that are not in *esse*: and though *Crook* report *Mott* and *Hale's* Case adjudged in point that their Leases are void by death; Yet *More* reporting the same case says, As to the matter in Law the Judges were divided two against two, and that the Judgment was given upon a misrecital of the Statute. And this point as I am informed, came lately in question in the King's Bench, and was adjudged that death doth not avoid such Leases. *Ideo quære inde.*

Parson's Leases which is confirmed, and dyes.

Cro. El. 123.

More 270.

Bayley verſ. Murnes T. 24. Car. 2. B R.

Quære.

There is a *quære* in *Dyer* whether such Leases shall be void upon 80 days absence *ab initio*, or but from the time of absence by 80 days; but it seems to me with some clearness that it shall only be void from 80 days absence, and not *ab initio*;

Dyer 372. p. 2. *When Parson's Leases shall be void by non-residence.*

For

For first, the words of the Statute are, that such Lease shall indure no longer than the Leasor shall be ordinarily resident, &c. So that till then it is to indure: and the Statute closes, that upon such absence the term shall cease, which it could not do, if had not a being before; for a thing cannot cease to be, that has not been. Quære.

But another *quere* may be startled in this Case upon the reason in *Lincolne* Colledg Case, whether such Lease shall be void against the present Incumbent that made it, or only against his Successors; but it seems to me with some clearness that the intent of the makers of this Act was to make such Lease void against the Leasor himself upon such absence: for, as before is said, the Statute says it shall indure no longer, which is a term of limitation, and that immediately upon such absence the Lease shall cease and be void; and it cannot cease immediately upon the absence, and yet be good during the life of the Incumbent. But in the Case of *Revel vers. Hart H. 43. Eliz. B. R.* the Court held the contrary as my Reporter says. *Ideo. quere.* *Whether void against the Parson himself.* Co. 3. 59. b. 60. a. Dyer 372. p. 11. Quære.

If any Parson Vicar, &c. be suspended inhibited or disabled to serve the Cure by the space of 80 days in a Year, this shall not make such Lease void; for the not serving the Cure must be voluntary: And it has been held that if a Parson be resident and Dobbins vers. Gerrard P. 39. El. B. R.

and do not ſerve the Cure, or ſerve the Cure and be abſent by 80 days, that in both theſe Caſes it will make ſuch Leaſe void.

Though this Statute upon 80 days abſence makes ſuch Leaſe void made by Parſons and Vicars, and ſays nothing of confirmation; yet a confirmation of the Patron and Ordinary in this caſe ſeems not to amend the matter, for if the Leaſe be void, the confirmation is of no avail.

Stat. 28. H. 8. cap. 13. Parſon leaſes and reſigns.

At the Common Law, if a Parſon Vicar, &c. had made a Leaſe and reſigned, the next Incumbent might have entred immediately upon the Leaſee; but by a Statute made in the 28th Year of *H.* 8. *the Leaſee may hold on his term for ſix years, if the Parſon that made his Leaſe ſo long live, and the term were made for ſo long time; but upon ſuch Leaſe there muſt be ſo much Rent reſerved within fourty ſhillings as ſuch Benefice is valued at in the King's Books.*

And by the ſame Statute, if a Parſon make a Leaſe and reſigns and dies, the Tenant ſhall hold out his Leaſe for the Year that was commenced at the time of his death, if the Term were to have had ſo long continuance, if the Parſon had not died: but this ſeems only of ſuch Lands as are plowed, for the ſucceeding Parſon is to have the Parſonage Houſe and Glebe which is

not

not ſowed within a month after he is inducted, allowing a reaſonable deduction for the Rent reſerved upon ſuch Leaſe.

But in both Caſes the Leſſee muſt pay the reſerved Rent to the ſucceeding Incumbent, who is inabled to ſue or diſtrain for the ſame.

And ſuch Leaſe muſt be in writing under hand and ſeal and not by parol.

But it ſhould ſeem the Statute of 13 *El.* before has made this Law of no effect. 13. El. cap. 20.

And having now done with theſe Statutes, as to Leaſes, let us next conſider what Bonds, Covenants, Promiſes, *&c.* are void within the Statute of 18 *Eliz.* before-mentioned. 18 El. c. 11.

Covenants, Bonds, *&c.* made for the enjoying houſes within Cities, Corporations, *&c.* are not void within this Law; for this Law makes no Bonds, Covenants, *&c.* void, which are not againſt the intent of this Statute, and the Statute of 13 *El. cap.* 10. but Leaſes of Houſes and Lands in Cities, *&c.* by the *Stat.* of 14 *El. c.* 11. are exempted out of 13 *El. cap.* 10. and are not within the *Stat.* of 18 *El.* before. Hob. 269. *Covenants, Bonds, which good.*

A Parſon made a Bond to reſign upon requeſt, and afterwards a Leaſe to his Patron of part of the Glebe for twenty one years: in an Action brought upon this bond, the Incumbent pleaded the Statute of 18 *Eliz.* and averred that this Bond More 641.

was made to ſecure this Leaſe, and to compel the Incumbent to reſide, and adjudged a good Plea, and an apt averment.

Cro. El. 439. Noy 66. A Parſon made a Leaſe, and in the Leaſe covenanted not to be abſent by the ſpace of 80 days in any one year, and gave Bond for the performance, and after became non-reſident by 80 days, and reſolved that the Bonds and Covenants were both void.

Olivers Caſe M 4. Jacob. B. R. A Parſon made a Leaſe, and covenanted neither to do or ſuffer to be done any matter, whereby the Leaſe ſhould become void, and after became non-reſident by the ſpace of 80 days in a year, and this was held a good Covenant, and a Covenant that the Parſon ſhould be reſident was held not to be againſt this Law by *Popham*, *Fenfield*, and *Clench* againſt *Williams*. *Idem quære.*

Quære.

Leaſes of Coll. Hoſpitals. And having now done with Leaſes to be made by Eccleſiaſticks of every kind, and having therein exceeded my bounds beyond Parſons and Vicars to all other Eccleſiaſticks, ſince the Leaſes of Colledges and Hoſpitals come in my way, I will give the Reader what ſatisfaction I can concerning them: And as to them,

It is to be obſerved, that they are not comprehended in the inabling Statute of 32 *H.* 8. nor in no other Statute that I find till the reſtrictive Statute of 13 *El.*

13 El. cap. 10. where-

whereby amongſt the reſt, the Maſters and Fellows of Colledges, and the Maſters and Guardians are diſabled to make any Grants or Conveyances of any of their poſſeſſions, other than for twenty one years, or three Livings from the making of ſuch Leaſe, and not from the day of the date, or from the date, as has been ſaid: and this muſt be of Lands uſually demiſed, and the accuſtomed Rent, or more, muſt be reſerved with all the other qualifications mentioned in the beginning of this Chapter.

And by the Statute of 18 *Eliz.* they are *reſtrained to make any concurrent Leaſes till within three years of the end of the former Terms that are in being.* 18 El. c. 11

I ſhall now ſhew the Reader, what things are demiſable within theſe ſeveral Statutes, and what Reſervations are good, and in what caſes the Acceptance of Rent by the Succeſſor will make a Leaſe good, that was voidable within theſe Laws, and the ſeveral qualifications mentioned in the beginning of this Chapter. *What Leaſes ſhall be good.*

One *Small* being poſſeſſed of the manor of *Padington* by a Leaſe from a Biſhop for a Term of years, the Biſhop made a Leaſe to another for three Lives, and before Livery the Tenant ſurrendred his former Term, and it was held that the Surrender was made in due time, and the ſecond Leaſe good. *Smalls* Caſe. M. 4. Jac. B. R. *Former in being.*

Cro. Jac. 458. 3 Bulſt. 290. *More in the new Leaſes than the old.*

A Prebend had uſually been leaſed (excepting the Crab-trees) and the Prebendary made a new Leaſe without excepting the Crab-trees, reſerving the antient Rent, with other due Circumſtances, and this Leaſe was held void againſt the Succeſſor by reaſon of the adding of the Crab-trees.

Co. 5. 15. a. *Next Avoidance not demiſable.*

It hath been adjudged, That a Biſhop, Dean, *&c.* cannot grant the next avoidance of an Advowſon, nor any Rent-charge out of the poſſeſſions of the Church, but the ſame is void within the reſtrictive Acts before-mentioned, though theſe cannot be ſaid any of the poſſeſſions of their Churches.

Co. 5. 15. a. *Charges void.*

It was alſo reſolved, that where an Arch-deacon made a Leaſe for three Lives warranted by the Statutes before mentioned, and the Leſſee granted a Rent-charge for a hundred years, which was confirmed by the Biſhop, Dean and Chapter, that notwithſtanding the ſame was void againſt the Succeſſor within the *Stat.* of 13 *Eliz. cap.* 10.

Co. 5. 14. b.

If a Writ of Annuity ſhould be brought againſt a Parſon, *&c.* pretending the ſame due by Preſcription, and although the Parſon pray in aid of the Patron and Ordinary, and upon a Plea pleaded by them the Plaintiff obtains a Verdict and Judgment, and all this by practice and fraud to charge the Glebe, it is void againſt the Succeſſor;

Succeſſor; for theſe Statutes being made for the benefit of the Church, advance of Religion and Hoſpitality, and to avoid Dilapidations, ſhall always have a favourable Conſtruction. 19 Aſſ. p. 9.

Acceptance of Rent, where it ſhall bind.

It is regularly true, that where the Wife iſſues in tail, or Succeſſor accepts the Rent after the death of the husband, Tenant in tail or Predeceſſor upon a void Leaſe made by the Husband, Tenant in tail or Predeceſſor, that ſuch Acceptance will not affirm the Leaſe: but this Rule muſt be underſtood of ſuch a Leaſe as is void *ipſo facto* without entry or any other Ceremony; and therefore if a Parſon, Vicar or Prebend, &c. make a Leaſe not warrantable by the Statutes for twenty one years, rendring of Rent, and dyes, here no Acceptance of Rent by the Succeſſor, &c. will affirm this Leaſe, becauſe the ſame was void without Entry or other Ceremony; but if a Parſon, Vicar or Prebend make a leaſe not warrantable within the before mentioned Statutes for life or lives, reſerving Rent, and dye, and the Succeſſor before Entry accept the Rent; this Leaſe ſhall bind him for the time, for this being an Eſtate of Freehold could not be void before entry. Co. 3 65. a. 37 H. 6. 3 & 4. 11 E. 3. Fitz. Abbot 9. 8 H. 5 19.

But if a Biſhop Abbot or Prior, which have the inheritance in Fee-ſimple in them, make a Leaſe for lives or years not warranted by the Statutes before mentioned, Dyer 239. pl. 42 F. N. B. c.

ned, not being abſolute void by their deaths, but only voidable by the entry of the Succeſſor, if the Succeſſor accept the Rent before Entry, be it for lives or years, he affirms the leaſe for his Life.

Rolli. 476. d. If a Biſhop make a Leaſe not warranted by the Statutes rendring Rent, and die, and his Succeſſor appoints his Bayliff to collect his Rents of that Mannor, who amongſt the reſt receives the Rent reſerved upon this Demiſe, and accounts to the Biſhop's Succeſſor for it, this is a good Acceptance, and ſhall bind the Biſhop for his time.

11 E. 3. F. Abbot. 9. So if a Parſon leaſe for life not warranted nor confirmed, reſerving Rent, if his Succeſſor receive Fealty of this Tenant upon this leaſe, he has thereby affirmed the leaſe for his time: the like it will be, if the Succeſſor bring an Action of waſte.

Dyer 239 p. 42.

3 H. 4. 2. a.

Cro. Jac. 1. 73. But if a Biſhop make a leaſe of Tithes or other things not manurable for life or lives, rendring Rent, and dies, and his Succeſſor accepts this Rent, it will not affirm the leaſe.

But whether ſuch acceptance upon a leaſe for years of Tithes, &c. will bind the Succeſſor, I muſt leave it a *Quære*, not finding that point any where reſolved.

Quære.

I having now held the Reader long upon this ſubject, ſhall now leave them and proceed to examine, what Leaſes or Farms they may with ſafety take or not take.

By

By a *Statute* made in the twenty firſt year of King *H.* 8. *It is amongſt other things enacted, That no Spiritual Perſon ſhall in his own name, or in the name of any other, take to farm any Mannors, Lands, Tenements or Hereditaments, upon the penalty of ten pounds for every Month that he holds the ſame; nor by himſelf nor any other ſhall buy Cattle, Corn, Lead, Tynn, Hydes, Leather, Tallow, Fiſh, Wool, Wood, or any manner of Victuals or Merchandizes, upon pain to forfeit the treble value of things ſo bought.* Stat. 21 H. 8. cap. 13. *Parſons, &c. muſt not take Farms.*

But a Spiritual Perſon may buy ſuch things for his own uſe, and if they do not fit him, he may ſell the ſame again; and ſo where he hath not ſufficient Glebe, he may take grounds for the maintainance of his Family. *Where he may.*

And it is further enacted by the ſame Statute, That no ſpiritual Perſon beneficed with Cure of Souls ſhall farm the Parſonage or Vicarage of another to take any Rent or Profit out of ſuch Farm, upon the penalty of fourty ſhillings a week, and ten times the value of the Rent or Profit he ſhall take out of ſuch Farm. *ſhall not farm another's Parſonage, &c.*

And it is further enacted by the ſame Statute, That no ſpiritual Perſon ſhall have or keep by himſelf, or any other, any Tanhouſe, or Brew-houſe, other than for his own Family, upon pain to forfeit ten pounds per menſem. *Muſt not keep a Tan-houſe or Brew-houſe.*

Penalties how to be recovered.

All which Penalties are given to the King and Informer to be recovered in any of his Majeſties Courts of Record at Weſtminſter *by Action of debt, Bill Plaint or Information, wherein no eſſoine, protection or wager of Law is to be admitted,* &c.

5 Eliz. cap. 5.

Where he may licenſe the eating of fleſh.

By the Stat. of 5 Eliz. *there is authority given to the Biſhop of the Dioceſs, Parſon, Vicar or Curate of the Pariſh to licenſe any ſick perſon to eat fleſh during his ſickneſs, and if his Sickneſs continue above eight days after the granting of ſuch licenſe, than the ſame is to be regiſtred in the Church-book,* &c. *and that licenſe to endure during the ſickneſs and no longer.*

Penalty if needleſs.

And if any Parſon, Vicar or Curate grant any Licenſe to any perſon or perſons, other than ſuch as evidently appears to have need thereof by reaſon of ſickneſs, the Parſon, Vicar or Curate that granted ſuch licenſe ſhall forfeit five Marks for every ſuch Licenſe, and the Licenſe to be void.

25 H. 8. cap.

Sheep.

In the 25 *year of* H. 8. *There was a Statute made againſt the exceſſive number of ſheep, wherein there is a* Proviſo, *that it might be lawful to all ſpiritual Perſons, and every of them, to keep ſuch and ſo many ſheep upon their own Lands, and after ſuch form and manner, and not otherwiſe, as they might have done before the making of the ſaid Act.*

There

There is several Acts of Parliament for punishing incontinent Priests, which though since the blessed Reformation (I do not mean the last pretended reformation, but that in the time of *E. 6.* and Queen *Elizabeth*) are become absolute and useless: yet since I have promised them all the Statutes they may fall in the danger of, these are not to be omitted; but before I come to those particular Laws, I will beg the Reader's pardon for giving him a short Historical account of the Restriction of the Marriage of Priests, which gave the occasion of these Laws. *Incontinence.*

Bellarmine in his disputations endeavours to make the single life of Priests to be *Jure Divino*; but if not so, yet he goes about to prove that it has been enjoyned by Canons as high as the Apostles time: and to that purpose vouches the Canons of the Apostles (which though they may be an tient, yet no rational Man that peruses them will believe they were made by the Apostles or very near their time) in which I must confess I find a Canon that by implication forbids Priests to Marry, but not Married Men to be Priests; and 'tis to this effect, *Ex bis qui cælibes in clerum pervenerunt jubemus, ut Lectores tantum & cantores (si velint) nuptias contrahant.* But if he had lookt a little back in those Canons he would have found another manner of Prohibition in these words; *Episcopus aut Presbyter* *De Clericis cap.* *Canon 25.* *Canon 5.* *Canons against the marriage of Priests.*

Presbyter aut Diaconus mortem suam praetextu Religionis non objecito: si objecit segregator à Communione, si perseverat deponitor. But however it cannot be denied, but there were Antient Canons against the Marriage of Priests, but never received or put in practice in *England*, though practised in *Italy France*, &c. but the Priests here Married, till *Anselme* Arch-Bishop of *Canterbury* a *Burgundian*, a powerful and busie Prælate in a Synod or National Council held at *Westminster* made a severe Canon against it; but he meeting with an obstinate Clergy, that were unwilling to change their Wives for Concubines (to speak in the softest word) were not obedient: whereupon (as my Author tells me) he called a second Council in the ninth Year of that King, where he made more severe Canons against the Married Clergy in the presence of the King and Nobility, to give them greater Authority, which he prosecuted with great zeal, but did not live to effect what he desired. I do not find that his Successor *Rodolphus* troubled himself much in this concern of the eight Years that he Governed the Church of Canterbury; but his Successor *William Corbet* followed the steps of *Anselm*, who for this and his other good works was Canonized a Saint at *Rome*: and in the Year 1126 called a Council or Convocation at *Westminster* against

Hollingshed 30.b.10.

Hollingshed 34.b.10.

against the Married Priests, wherein one *John de Crema* the Pope's Legate sent to manage this business, being a learned Man, made an Eloquent Oration in commendation of Chastity and a single life, and inveighed violently against the Married Clergy; and as divers Authors of good credit affirm, the great Orator was the same night taken in bed with a Woman, which made him to return with shame enough; howsoever, as Bishop *Goodwyn* tells us, that in that Convocation the Canons were renewed against the Married Clergy; but the Arch-Bishop finding himself too weak to deal with so stubborn a Clergy, commendeded the care of this business to the King, who taking advantage of the Canons squeezed some Money out of the Married Clergy by way of Commutation. I find no more of this matter, till after the death both of this Arch-Bishop and *H.* 1. But I find there was a Convocation held at *London Decemb.* 13. 1138. by the Command of *Albert* Cardinal Bishop of *Hostia*, where this matter was again violently prosecuted: and I find no more after of it till in a Convocation or Council held under *Rich. Wethershead* Arch-Bishop of *Canterbury* 1229. in which it is decreed, *Qui autem in Subdiaconatu vel supra ad matrimonium convolaverint, mulieres renitentes & invitas relinquant.* But it should seem, notwithstanding all this persecution, that

H. Huntingd. l. 7. Hoveden in H. 5. Speed 461. a. &c. Bish *Goodwin* Catalo. of Bish. 83.

Goodwin 84. Fullers Eccl. Hist. 27.

Lindw. *Si qui Clerici.*

that for some Years after some Married Men held their Livings: for in a Synod or Council held by *Otho* the Pope's Legate at Saint *Paul's* in *London* in the Year 1237. there is a Canon to this effect, *Innotuit nobis, pluribus referentibus fide dignis, quod multi propriæ salutis immemores, Matrimoniis contractis, clandestine retinere cum uxoribus Ecclesias, & Ecclesiastica Beneficia adipisci de novo, & promoveri ad sacros ordines contra statuta sacrorum Canonum, non formidant*, &c. and then proceeds *Quod si repertum fuerit aliquos taliter contraxisse, ab Ecclesiis & Ecclesiasticis Beneficiis (quibus tam eos quam quoslibet alios uxoratos fore decernimus ipso jure privatos) removeantur omnino*, &c.

Cap. *de uxoratis a beneficiis amovendis.*

This nail being thus at length driven to the head, the secular Clergy lay about 300 Years under this Bondage, and though if they would be at the cost they might have dispensations to keep Concubines, yet for the credit of holiness there was great care taken they should not do it publickly, or scandalously: to which purpose there is a Canon in the same Council I last mentioned to this effect, *Statuimus, & statuendo præcipimus, ut ubi Clerici, & maximo in sacris ordinibus constituti, qui in domibus suis & alienis detinent publice Concubinas, eas à se prorsus removeant infra mensem, & illas vel alias de cætero nullatenus detenturi*, &c.

Cap. *de Concubinis Clericorum removendis.* * Nota. *Canons against Concubines.*

There

There was another Canon much like this made in another Council held under *Stephen Langton* Arch-Biſhop of *Canterbury* at *Oxford* not long before, in the Year 1222. to this effect, *Quod Clerici Beneficiati aut in ſacris ordinibus conſtituti in Hoſpitiis ſuis publicè tenere Concubinas non audeant, nec etiam alibi cum ſcandalo acceſſum publicum non habeant ad eas.* Cap. Clericalis Ordinis. * Nota.

So that it appears clearly by theſe Canons that Clerks were not in thoſe days poſitively and abſolutely forbidden to keep Concubines; but it muſt not be done *publicè nec cum ſcandalo*, nor muſt they have *publicum acceſſum.*

And it appears by the *centum gravamina* that were preſented to the Pope about the Year 1521. by the *German Princes*, that it was one of the grievances of that Nation, that the Pope permitted Clerks Religious and ſecular Perſons to live publickly with their Harlots and get Children; and that in moſt places the Biſhops and their Officials not only tolerated Concubinage upon paying Money in the more diſſolute ſort of Monks, but alſo exacted it of the moſt continent ſaying, it was then at their choice whether they would have them or no. *Diſſuaſions for Concubinage.* Hiſt. H. 8. *by my Lord Cherbery.* p. 131. art. 74. Art. 91.

So upon the whole matter it ſeems it was no offence in a Clergy-Man that had a diſpenſation to keep a Concubine privately Sr. Calvins Inſt. lib. 4. c. 12. Sect. 23.

privately in a nooke without ſcandal, and go to her in the dark; but to keep a Wife of his own was a ſin againſt the Holy Ghoſt, he muſt be deprived, he muſt be depoſed. And therefore I cannot blame the *German* and *French* Laity that they were ſo ſolicitous in the Council of *Trent* to have their Prieſts Married, being loth, as ſhould ſeem, to truſt their Wives and Daughters at confeſſion with Prieſts that had not Wives of their own. And it was no leſs a Religious than prudent expreſſion of Pope *Pius* the Second, that though there was many weighty reaſons why Prieſts ſhould be reſtrained from Marriage, yet the reaſons for reſtoring them their Wives were the more weighty.

Dyer 133. p. 1. 2 H 4. 16. a.*. Cap. de uxoratis a beneficiis amovendis. ubi ſupra.

Having given the Reader this Hiſtorical account concerning the reſtraint of the Marriage of Prieſts, and the ſucceſs of it, I will in the next place ſhew what Acts of Parliament have been made relating to this matter, and which are in force at this day.

1 H 7. cap 4. *Statute that the Biſhops ſhould impriſon Prieſts for Incontinence.*

In the firſt Year of H. 7. *there was an Act made, that it ſhould be Lawful to all Arch-Biſhops and Biſhops and other Ordinaries having Epiſcopal Juriſdiction to puniſh and chaſtiſe ſuch Prieſts and Clerks and Religious Men being within the bounds of their Juriſdiction, that ſhould be convicted before them by examination and*

other

other Lawful proofs requiſite by the Law of the Church, of Adultery Fornication and Inceſt, or any other fleſhly incontinency, by committing them to Ward and Priſon, there to abide for ſuch time as ſhall be thought to their diſcretions convenient for the quality and quantity of their treſpaſs. And that none of the ſaid Arch-Biſhops, &c. be thereof chargeable, of, to, or upon any Action of falſe or wrongful Impriſonment, but that they be utterly thereof diſcharged in any of the caſes aforeſaid by vertue of this Act.

It ſeems a Canon would not juſtifie an Impriſonment.

This Law for ought I know ſtands ſtill in force, but there was a ſevere Law made in the 31 H.8. *whereby it was made Felony for a Prieſt carnally to uſe a Woman to whom he had been Married or contracted, or if he kept company or familiarity with her, or if any Prieſt kept a Concubine, as by paying for her board, maintaining her with Money or other gifts or means to the evil example of others, he ſhould forfeit all his Goods Cattels and Spiritual promotions, and be put in Priſon for the firſt offence, and the ſecond offence to be Felony.*

31 H.8.c. 14. *made Felony to uſe their own Wives.*

But this ſeeming too ſevere was the next Year repealed, *and it was enacted, That ſuch Offender ſhould for the firſt offence loſe all his Goods Chattels and Debts, and loſe the profits of all his Eccleſiaſtical promotions; but one for his life, for the ſecond offence to forfeit his Goods Cattel and*

32 H.8.c. 10. *mitigated.*

and Debts, and the profits of all his Lands and of all his Spiritual Benefices Promotions and Dignities for his life. And for the third offence should make the like forfeiture and be Imprisoned during life.

31 H. 8. c. 14. *By an Act of Parliament made in the* 31 *of* H. 8. *which is commonly called the Act of the six bloody Articles, by the third Article it was declared, that Priests after they have received Orders might not Marry, and to affirm the contrary thereof was made Heresie and Treason by that Act: but this bloody Act was repealed by* 1 E. 6. cap. 12.

The 6 Articles makes the marriage of Priests Heresie.

All Laws against marriage of Priests made void. *By the Statute of* 2 *and* 3 E. 6. cap. 21. *all Laws Statutes Canons and Ordinances and Constitutions made against the Marriage of Priests are made null and void.*

Children legitimate. *And by another Statute made the fifth and sixth of* E. 6. cap. 12. *It is adjudged and declared, that the Marriage of Priests is Lawful, and legitimates their Children, and makes them capable to endow their Wives, and to be Tenants by the Courtesy. But these Laws were repealed by the Stat. of* 1 Mariæ cap. 1.

1 Jacob. c. 25. *However it came to pass I know not, but for ought I can find, these Acts lay repealed all Queen* Elizabeth's *time till* 1 Jac. *then the latter Act was revived and made perpetual, and their Children made legitimate.*

So

So that upon the whole matter all acts of Parliament, Canons, Constitutions, &c. that restrain the Marriage of Priests, or the Illigitimation of their Children, are made null and void; but the Canons and Acts of Parliament that punish their Incontinency stand in force. Next let us see what Priviledg the Clergy have right to at this day.

CHAP. XI.

The Eleventh Chapter shews, what Privileges belong to the Clergy at this day by the Common and Statute Laws of this Realm.

THE Laws of this Realm have allowed the Clergy in holy Orders many great Privileges: First, in their Persons, they are not compellable to serve in any Temporal Office, as Sheriff, Constable, Overseer of the Poor, &c. Neither can they be prest to serve in the War: neither may they be arrested in the Church, or Church-yard, when they are attendant on divine Service, upon pain of Imprisonment, and ransom at the Kings pleasure, and likewise

The Priviledge of the Clergy.
2 Inst. 3. 625. 4.
May not be Officers temporal.
5 E. 3. c. 5. 1 R. 2. c. 13
Must not be arrested in Church or Church-yard.

likewise to make agreement with the Party.

1 Mariæ Seſſ. 2. cap. 3.

And by a Statute made 1. *Mariæ.* It is enacted,

Most not be disturbed praying or preaching.

That if any Parſon, &c. of their own Power and Authority at any time, &c. ſhall or do willingly or of purpoſe by open and overt word, fact, act or deed maliciouſly or contemptuouſly moleſt, let, diſturb, vex or trouble, or by any other unlawful way or means diſquiet or miſuſe any Preacher or Preachers, &c. licenſed, allowed or authorized to preach by the Queen, or by any Arch-biſhop or Biſhop of this Realm, or by any other lawful Ordinary, or by either of the Univerſities, &c. or otherwiſe lawfully authorized or charged by reaſon of his or their Cure, Benefice or other Spiritual Promotion, or Charge, in any of his or their Sermon or Collation in any Church, Chappel, or Church-yard, or in other place appointed to be preached in,

Or if any Perſon, &c. ſhall maliciouſly, willingly or of purpoſe moleſt, let, diſturb, vex, diſquiet, or otherwiſe trouble any Parſon, Vicar, Pariſh-Prieſt or Curate, &c. ſaying, doing, ſinging, miniſtring, or celebrating maſs, or other divine Service, Sacraments, &c. that at any time then after ſhall be allowed, ſet forth or authorized by the Queen's Majeſty.

That the Offender upon Conviction before two Juſtices of the Peace ſhall by them be commit-

committed to the Goal without bail or mainpriſe for three months, and after to the next Quarter Seſſions: where if he repent and be reconciled, then to be diſcharged of his Impriſonment, finding ſureties for his good behaviour; and if he fail therein to be continued till the next Quarter Seſſions, &c.

This Act though made in the time of Popery is ſtill in force, and may be executed upon ſuch as diſturb the preſent Miniſters, Parſons, Vicars and Curates, &c. And though it refer to ſuch Church-Service as then after ſhould be ſettled by the Queen, yet I conceive it extends to her Succeſſors, and a ſettlement by Act of Parliament is a ſettlement by the King in the moſt ſuperlative manner: and the late Act for Uniformity declares and enacts, that all former Acts for Uniformity of Common Prayer ſhall be of force, and extend to the Book of Common Prayer. 14 Car. 2. c. 4.

The Bodies of Clergy-men cannot be arreſted upon any *Capias* ſued forth upon any Statute-Staple or Statute-Merchant; for the Proceſs are made out conditionally *Si Laicus fuerit*: and if the Sheriff or any other Officer arreſt a Clergy-man upon any ſuch Conditional Proceſs, I conceive an Action of falſe Impriſonment lyes againſt him that does it, or he may have a ſpecial *Superſedeas* out of the Chancery. *Muſt not be arreſted.* Regiſt. 147.

Priviledg in their goods.

cery (that is the Curſitors Office.)

Regiſt. 260. a..

And every Parſon, Vicar, &c. is by the Common Laws of *England* free from the payment of any tolls in all Fairs and Markets, not only for all the Goods and Merchandizes gotten upon their Church-Livings, but alſo for all Goods and Merchandizes by them bought to be ſpent upon their Rectories and Church-Livings.

Free from Tolls.

Pontage, Murage.

And they are quit of Pontage Murage and other like charges; and if they be diſtrained for any of theſe, they may have a Writ out of the Chancery, as aforeſaid, made of Courſe without petition or motion, made under the great Seal of *England*, directed to the party that diſtrains or diſturbs them for any of theſe things, commanding them to deſiſt: and if ſuch Writ be not obayed the Curſitor of Courſe will make out an *alias* and *pluries*; and if none of theſe will be obeyed, an Attachment to arreſt the party and detain him till he obey: and this Writ is called a Writ *De eſſendi quietum de Tolonео*, which you may ſee in the Regiſter or in the *natura brevium*.

Regiſt. 260. a.. Fn.b.227.f.

Not bound to appear at Leets and Sheriffs Turns.

Regiſt. Or. 175. a.. Fn.b. 160. C.

They are not bound to appear or do ſuit at the Sheriff's Turn or any Leet or Law day; and if they ſhall be diſtrained ſo to do, they may have a Writ of Courſe in the Chancery directed to the Lord of the Leet, commanding him to forbear diſtraining

ſtraining them for any ſuch Cauſe with like proceſs as in the laſt for his contempt.

And by the Statute of *circumſpecte Agatis* it is enacted, *De violenta etiam manuum injectione in clericum, & in cauſa defamationis placitum tenebitur in Curia Chriſtianitatis, dummodo ad correctionem peccati agatur & non petatur pecunia.* Stat. 13. E. 2 Inſt. 491, 492, 493.

And if a Clergy-Man have Lands, by the tenure of which he is ſubject to be Bayliff Reave or Beadle, and be choſen into any ſuch Office by reaſon thereof, he has a Curſitory writ out of the Chancery to diſcharge himſelf. Regiſt. or. 187. b. Fn. b. 175. b. *Not to be Bayliffs, Reaves, &c.*

So if the Sheriff or Collector of the Tenths or Fifteens will diſturb them in the Lands belonging to their Churches, &c. they may have the like Writ for their diſcharge, and like Proceſs for diſobeying of it, *ut ſupra.* Beg. or. 188. a. F. n. b. 176. a. *Muſt not be diſturbed by Collector of Tenths.*

Antiently if a Clergy-Man had been convicted of any Murder Robery Burglary, &c. he was upon the demand of his Ordinary to be delivered over to him, where he was to make his Purgation according to the Rules of the Eccleſiaſtical Laws; and if he cleared himſelf, he was acquit * without any regard to his Conviction at Common Law; but if they adjudged him guilty, then he was to be degraded and kept in Priſon: and this was confirmed to them by ſeveral Acts of Parlia- *The Priviledg of Clergy in criminal Caſes.* * Lindwood cap. *Clerici proſuis criminibus detent.* gloſſ. verb. pro convictis. Weſt. 1. c. 2. Marleb. c. 27. 25 E. 3. cap. 4. and 5. 4 H. 4. c. 3.

Parliament. But this priviledg was never allowed to them in this Kingdom in Treason petit, Treason or Sacriledg.

4 H.7.cap.13. And a Delinquent might have had his Clergy *ad infinitum* till the Stat. of 4 *H.*7. And though this priviledg of the Clergy be taken totally away in many Cases by several Statutes, and in other Cases Lay men have it in Common with the Clergy, if they can read as a Clergy-Man; and though the delivery of them over to the Ordinary be totally abolished; yet the Clergy that are in Holy Orders at this day retain some of their antient priviledges, which the Lay-Men are not capable of.

For if a Clerk in Holy Orders be convicted (that is found guilty by the Petit Jury) of a Crime for which the benefit of the Clergy is allowable; at this day he shall not upon the allowance thereof be burned in the hand (as a Lay-Man shall) upon the producing of his Orders; and if he have not them with him, the Court may *ex gratia* give him time to produce them till any other Assise or Sessions.

And a Clerk in Holy Orders at this day shall have his Clergy *ad infinitum* from time to time, which no Lay-Man can have above once.

St.3 E.3.c.1. 14 E.3. c.1. 18 E.3. c.4. 1 R.2. c.3. The goods of Clergy-Men were by several Statutes exempted and freed from the King's purveyance; but his Majesty having

having by Act of Parliament graciouſly releaſed this Duty, the Laity hath the ſame priviledg. *Purveyance.*

A Clergy-Man ſhall not be amerced the higher in reſpect of his Church Living or Benefice. 2 Inſt. 627. *Not amerced for the Church-land.*

Nor ſhall any execution be executed upon the goods of his Church, nor any diſtreſs taken in the antient Fee thereof; but otherwiſe it is of Lands of late purchaſe: and if he fear any ſuch thing he may have a Protection in Chancery *cum clauſula (Quia nolumus.)* Regiſt. ov. 289. F. N. B. 29. *No Execution upon the goods of the Church.*

If an Action of Treſpaſs Debt Account, or other Action, wherein Proceſs of Capias lies, be brought againſt a Clerk in Holy Orders, and the Sheriff upon the Original return that the Defendant is *Clericus Beneficiatus nullam habens Laicum feodum ubi ſummoniri poteſt*; in this Caſe the Plaintiff cannot have a *Capias* to arreſt his body, but a Writ to the Biſhop to compel him to appear. 2 Inſt. 4. *No Capias againſt a Clerk.*

And note that all the Priviledges of the Church of *England* are confirmed by the Antient and good Statute of *Magna Charta*: And ſo they were for the moſt part at the opening of every other Parliament after till the beginning of the Reign of *H.* 5. How it began then to be diſcontinued by the negligence of the Clergy, or for what other cauſe, I know not. *Priviledge of the Clergy confirmed by ſeveral Parliaments.*

Concluſion.

And ſo having thus briefly mentioned many of the priviledges of the Clergy, whereof the Common Law takes notice, and to which they have right at this day by the Laws and Statutes of this Realm, I ſhall not only conclude this Chapter, but the firſt Part of this Diſcourſe with

Gloria Deo Omnipotenti, Amen.

FINIS.

THE

Second Part:

BEING THE

LAW

OF

TITHES or TITHING.

Shewing in what manner all manner of Tithes Offerings Mortuaries and all other Church Duties are to be paid, and in what Courts and manner they may be recovered, and to what charges they are Subject;

With many other things fit for all People, but especially all Clergy-men, to know.

Written by Sir *SYMON DEGGE* Kt.

LONDON,
Printed *Anno Domini* MDCLXXVI.

THE

Second Part:

BEING THE

LAW

OF

TITHES FOR TITHING.

Shewing in what manner all manner of

Tithes, Offerings, [illegible] and all other
Church Duties [illegible], which in y has
Court [illegible] be recovered,
and to what Church [illegible] are Subject.

With many other things fit for all [illegible], but
especially all Clergymen to know.

Written by Sir SYMON [illegible] Kt.

LONDON
Printed [illegible] MDCCXXVI.

To his Worthy and Reverend Son in Law Mr. *Anthony Trollop*, Rector of *Norbury* in *Derbyshire*.

Dear Son,

IT is now above thirty years, since the Tithing Table published many years agoe came to my hand; and upon perusal thereof finding that the Common Laws and Canon-Laws differed in many things, I thought it would be a Work grateful to the Clergy, and useful to others, to publish something in order to the reconciling of them: To which end I had gathered together some materials; but the War coming immediately on, and after that the Ecclesiastical Courts being laid aside, and other

other Courſes found out for the Recovery of Tithes, I deſiſted the further Proſecution of that deſign, until it was revived at your Requeſt, ſeconded by ſome other Reverend Divines; whereupon looking up my old Notes, and adding ſuch Judgments and Reſolutions, that I have ſince come to the knowledg of, the whole is reduced to the form I here preſent it to you; you have moſt Right to it, and I heartily wiſh it may be of as great Service and advantage to you, and all the Reverend Clergy, as is deſired by him that is

Your affectionate

loving Father

S. D.

THE LAW OF TITHES or TITHING.

CHAP. I.

The First Chapter shews, what Tithes are, the several sorts and kinds thereof, and in what manner due.

HAving in the former part of this discourse shewed the worthy and Reverend Clergy-Men in what manner they may lawfully and justifiably attain to such preferments in the Church as they are capable of, and in what manner

manner they may avoid all the perils and dangers that attend the Beneficed Clergy-Men; it rests now that I shew him what profits they may justly challenge to belong to their Church-preferments, and in what manner to be paid, and how to be recovered if need require. And first of Tithes, which the Canonists define to be

Definition.

A tenth part or portion of increase commanded to be paid to the Sons of Levi *for their Ministry, wherein they served in the Tabernacle.*

Or, as some others define them, they are

Omnium bonorum licitè quæsitorum quota pars, Deo Divina institutione debita.

But the Common Lawyers define them to be

Co. 11. 13. b.

An Ecclesiastical Inheritance Collateral to the Estate of the Land, and of their own proper Nature due only to an Ecclesiastical Person by the Ecclesiastical Laws.

And for that reason no unity of possession can extinct or suspend them; but they, notwithstanding any such unity, remain in *esse*, and may be demised or granted notwithstanding any such unity: but may more properly in my judgment be defined to be

A tenth part or some other thing in lieu thereof, of all the Increase yearly arising forth of the profits of the Lands and Stock,

Stock, or raiſed by the Induſtry of the Pariſhioner, and properly due to the Clergy that have the Cure of the Souls in the Pariſh where they ariſe.

Diviſion.

And by ſome Canoniſts Tithes have been divided only into two kinds, that is, Predial and Perſonal: and in this manner of diviſion they comprehend all manner of Tithes, that ariſe either immediately or mediately from the Land, under the name of Predial Tithes: which they again diſtinguiſh in Predial mediate and immediate, under which they comprehend the Tithes of Corn, Hay, Wood, Herbs and all other things, that either come from the ground by manurance, or of its own Natures, and under the name of Tythes Predial mediate is comprehended the Tithes of all manner of Cattel and other things that receive their nouriſhment from the ground.

Doct. & Stud. l. c. 55. p. 168. b.

Lindwood c. *Quoniam propter verbis divid end, eſt decima.*

But Tithes by the Common Lawyers, (and which diviſion I ſhall obſerve in my diſcourſe) are divided into Predial Mixt and Perſonal: and according to this diviſion all Tithes that ariſe from the ground, as before is ſaid, immediately, are only accounted to be Predial; and thoſe that ariſe from Cattel and other things, that receive their nouriſhment immediately from the ground, they call Mixt; and thoſe that ariſe from the Labour and Induſtry of Man alone Perſonal.

2 Inſt. 649. Roll 1. 635. a.

Lindwood c. *Quoniam propter verbis talibus decimis.*

Tithes

Tithes again both by the Common Lawyers and Canoniſts are divided again into great Tithes, in Latine *majores ſeu groſſæ decimæ*; and into ſmall Tithes, in Latine *minores* or *minutæ decimæ*. And in this diviſion Corn Hay and Wood are all accounted groſs or great Tithes. But there has been ſome queſtion whether Tithe Wood ſhould be accounted a great or minute Tithe, and reſolved, that if a Vicar be only endowed with the ſmall Tithes, and have by reaſon thereof always had Tithe Wood, that in ſuch Caſe it ſhall be accounted a ſmall Tithe, otherwiſe it is to be accounted amongſt the great Tithes.

Rolls 1. 643. v. 2.
2 Bulſt. 27.

But all manner of Tithes of Gardens Herbs Roots Fruit Saffron Woad, whether ſowed in Fields or Gardens, Flax Hemp Hops Rape and all other Predial Perſonal and Mixt Tithes are accounted *inter minutas decimas*; but in *Udal's* and *Tyndal's* Caſe *Hutton* 77. in ſome Caſes Hops Woad, *&c.* may be great Tithes in places where they are much ſowed.

Cro. El. 467. Hutton 77. Cro. Car. 28. Rolls 1. 643. v. 3.

And herein the Cuſtom of *England* is kind to the poor Vicars, making many things to be allowed for Minute Tithes that are not ſo in others.

Lindwood c. *Quoniam propter verb. talibus decimis.*

I have been the longer in this diviſion of Tithes between great Tithes and ſmall Tithes, becauſe many Vicarages are indowed with the ſmall Tithes only, and in

in ſome old Indowments you will find the word *Altera omnia*, which by Cuſtom may as well comprehend the ſmall Tithes, as ſuch profits as ariſe from the Altar.

Spelm. Gloſſ. 28 Cro. El. 578. Hetley 135.

Now perhaps it may be expected, I ſhould ſay ſomething to ſatisfie the Reader by what Law Tithes became due under the Goſpel. But in that point I find ſo great a difference between the Canoniſt School-men and Divines, that it would be a great preſumption in me to take upon me to determine the point, the rather becauſe I am informed by a reverend learned and grave Divine, that the learned *Selden* retracted his opinion therein; and what it was, you may ſee in the places noted in the Margent: But ſo far as I have obſerved, they all agree in this, That Tithes *quoad ſuſtentationem Cleri vel miniſtrorum Dei* are *jure divino*; So that the ſole queſtion amongſt all theſe learned men is about the quantity, or *quota pars*. But be they due *jure divino*, *jure Eccleſiaſtico*, or *jure humano*, I conceive the difference cannot be great, ſince, as it muſt neceſſarily be confeſſed, they have been given and conſecrated *Deo & ſanctæ Eccleſiæ*, and ſo being dedicated to God and his Service (in my poor Judgment) the taking them away from the proper uſe and end cannot be leſs ſacrilegious, than if they were without diſpute *jure divino*. I ſhall not therefore ſtuff this preſent Di-

Quo Jure debet.

Helyns Hiſt. of Preſbytery 391. Seld. Hiſt. decim. cap. 5. Sect. 4. cap. 7. *And in the end of the Epiſtle to the Reader.*

The Queſtion.

Doct. & Stud. l. 2. cap. 55. f. 164. b. 165 a.

scourse with the Arguments of any side; but shall leave the learned to their own Conceits, it serving my purpose that they be due by any Law, divine, humane, or Ecclesiastical. My next examination shall be to whom they are due.

CHAP. II.

The second Chapter shews to whom Tithes are due, and by whom to be paid.

To whom Tithes are due to be paid.

HAving shewed in the former Chapter what Tithes are, and the several kinds thereof, I shall in the next place shew to whom the same are due to be paid.

That there were Infeudations of Tithes, before the parochial Rights were settled, both in this and other Countries is without dispute both here in *England* and in other Christian Kingdoms and Commonwealths: in which particular the curious may satisfie themselves in Mr. *Selden's* History of Tithes, and other Authors. And it is more clear, that before the time that the parochial Rights of Tithes were settled, that the Owners of Lands might grant their Tithes to any Ecclesiastical or Religious

Selden's hist. decim. 178, &c.

Tho. Aq. Sum. 2o. 2æ. q. 88. art. 3. *conclusione.*

Religious perſons (a multitude of Precedents whereof the Reader for his ſatisfaction may find in the *Monaſticon Anglicanum* of Mr. *Dugdale*): ſo that by this means the whole Tithes of ſome Pariſhes, and divers great portions out of other Pariſhes were granted to Abbots, Priors, &c. and ſome to the Parſons and Rectors of other Pariſhes; which is the reaſon, that at this day there is ſeveral portions of Tithes held from the Pariſh Churches by Impropriators and the Rectors of other Pariſh Churches.

When the Parochial Right of Tithes firſt begun.

When the parochial Right of Tithes was firſt ſettled, there hath been (as ſhould ſeem) a vulgar Error: for 'tis frequently ſaid in our Common Law Books, that before the general Council of *Lateran*, which was held 1179. That every one was at liberty to give his Tithes to what Spiritual Eccleſiaſtical or religious Perſon he pleaſed; but that by that Council the parochial Right of them was ſettled. Neither was this an Error of the Common Lawyers only; for Mr. *Lindwood* a learned Doctor of the Civil and Canon Laws, that lived in the time of *H.* 5. about two hundred and fifty years ago, tells us, that

10 H. 7. 18. a. 43 E. 3. 5. Doct. & Stud. l. c. 55. Co. 2. 44. b. Dyer 84, &c.

Bene potuerunt Laici decimas infeudum retinere, & eas alteri Eccleſiæ dare ante concilium Lateranenſe, non tamen poſt, &c.

Lindwood c. locat. & conduct. verb. portion.

But there is no Canon in that Council to be found, whereby the parochial right of Tithes was settled, nor was the parochial Right of Tithes settled till the year 1200; and then not by any Canon, but by a decretal Epistle of Pope *Innocent* the third, a Brief of which Epistle here follows, as I find it in Mr. *Seldens* History of Tithes, and in Sir *Edward Cooks* Institutes.

Selden hist. Decun. 231. 2 Inst. 641.

Innocent. 3. Epist. decret. l. 2. p 457. Edit. colen.

Pervenit ad audientiam nostram, quod multi in Dioecesi tua Decimas suas integras vel duas partes ipsarum non illis Ecclesiis, in quarum Parochiis habitant, vel ubi praedia habent, & à quibus Ecclesiastica percipiunt Sacramenta, persolvunt, sed eas aliis pro sua distribuunt voluntate: Cum igitur inconveniens esse videatur & a ratione dissimile, ut Ecclesiae, quae Spiritualia seminant, metere non debeant a suis Parochianis temporalia, & habere, Fraternitati tuae (being directed to the Archbishop of *Canterbury*) *authoritate praesentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet seu consuetudine hactenus observata, quod canonicum fuerit ordinare, & facere quod statueris per Censuram Ecclesiasticam firmiter observari: Nulli ergo, &c. Confirmationis, &c.* Datum Lateran. 2 Nonas Julii.

I must acknowledg I give the Reader this a little imperfect for want of the Original,

riginal: and it was Sir *Edward Cook's* Caſe alſo; for I perceive he borrowed his from Mr. *Selden.*

But ſome have fancied (and perhaps not without reaſon, for this ſeems not to be a general Decree, but a particular Inſtruction to the Arch-biſhop of *Canterbury*) that the parochial Right of Tithes was not generally ſettled of long after, that is, by a Canon made in the Council of *Lyons*, which was in the year of our Lord 1274. in which Council there is a Canon for the ſettling the parochial Right of Tithes. But whether that were the Original, or a Confirmation of ſome other Decree or Council, I dare not take upon me to judge: but certain it is, that about this Century the parochial Right of Tithes was ſettled in general. But though this decretal Epiſtle of Pope *Innocent* the third be not general, yet it was obligatory as to the Province of *Canterbury*; ſo that in that Province the parochial Right of Tithes may take its date from the time of that decretal Epiſtle, which was, as above is ſaid, in the year 1200.

But after the Parochial Right of Tithes was ſettled, it is clear, that no Lay-man was capable of Tithes in pernancy but in particular Caſes, till the Statutes, by which the Monaſteries and religious Houſes were diſſolved, enabled them; but in ſome ſpecial Caſes, Lay-men were capable of

Selden. hiſt. decim. 398. *and in his Review* 478.

Co. 2. 44. a. *Lay-men capable of Tithes in Pernancy.* Co. 2. 45. a.

Tithes in pernancy, as in the Case of *Pigot* and *Heron* cited in the Bishop of *Winchester's* Case: where the Case is put, that the Lord of a Mannor, and all those whose Estate he had in the Mannor time out of mind, had paid to the Parson of *D.* (in which Parish the Mannor lay) for the time being for the maintainance of Divine Service in contentation of all Tithes arising within the said Mannor, and that in consideration thereof he and all those whose Estates he had in the said Mannor by the time aforesaid had and enjoyed all the Tithes arising in the said Mannor: and in this Case it was adjudged, that the Lord of the Mannor might have these Tithes in pernancy, and sue for the same in the Spiritual Court, but a man cannot claim Tithes generally as part of, or belonging to, a Mannor.

Lay-men capable of Tithes in Pernancy by the Statutes of the dissolution of Abbeys.

But since the several Statutes made for the dissolution of Monasteries, those Tithes which were appropriated to the religious houses so dissolved are become Lay-Fee, and any Lay-man by the Laws of this Realm are capable of them in pernancy, and may sue for the same in the Spiritual Courts.

All Tithes belong to the Rector prima facie. *Portions by Prescription,*

But since the parochial Right of Tithes was settled *prima facie*, All Tithes not appropriated belong to the Rector of the Parish Church wherein they arise; yet notwithstanding the Parson of one Parish may

may preſcribe to have a Portion of Tithes in the Pariſh of another; and ſo might Abbot, Priors, and other religious perſons preſcribe to have portions of Tithes in Pariſhes, whereof they had not the Advowſons; and by conſequence the Patentees from the Crown, and the Impropriators may claim the ſame by preſcriptions in the Abbots, Priors, &c. and the uſage ſince the diſſolution will ſerve to prove the preſcription and uſage in the Abbots, &c. that they held the ſame ſo time out of mind.

14 H. 4. 17. a
44 Aſſ. p. 25.
Roll 1. 657. o.

How Preſcriptions are to be proved.
Seld. hiſt. decim. 364. 290.

As for extra-parochial Tithes, there has been ſome differing Opinions. Sir *William Herle* was of opinion, that they belonged to the Biſhop of the Dioceſs, as general Parſon of his whole Dioceſs, grounding his opinion, as it ſhould ſeem, upon the Canon Law: But there was never any ſuch Canon received or approved in this Kingdom.

Extra-parochial Tithes.
7 E. 3.
Seld. hiſt. decim. 108.

But it hath been reſolved both in Parliament, and by ſeveral Judgments at Common Law, that all extra-parochial Tithes belong to the King, who is a mixt Perſon, and capable of Tithes at the Common Law in pernancy.

21 Aſſ. 75.
2 Inſt. 647.
Roll 1. 657. o. p. Seld. hiſt. decim. 365.

Now having ſhewed in general who are capable of Tithes in pernancy at this day, and to whom of Common right they belong, I ſhall proceed to ſhew to whom they are due in ſome particular Caſes.

In particular Caſes to whom Tithes are due.

Cro.El.161. *Against the Parsons own Lease.* Portman verſ. Hind in 31, & 32 El.B.R. Co.11.13.b.* Dyer 43.p. 22 *eſt Quære.*

If a Parſon Leaſe his Glebe-Lands, and do not alſo grant the Tithes thereof, the Tenant ſhall pay the Parſon Tithes: nay though the Parſon Leaſe his Lands *cum omnibus proficuis & commoditatibus eidem ſpectantibus*, rendering Rent *pro omnibus exactionibus & demandis quibuscunq*; Yet notwithſtanding the Tenant ſhall pay the Parſon the Tithes ariſing upon theſe Lands.

The like Law it is, if an Impropriator, Vicar, &c. make ſuch Leaſe, &c.

Againſt his Feoffment. Co.1.111.a.* Co.11.13.b.*

And as the Parſon ſhall have Tithe of his own Tenant, ſo he ſhall have of his Feoffee. And if a Parſon have Lands in the ſame Pariſh whereof he is Parſon, and demiſes his Tithes, he ſhall pay Tithes to his Farmer.

Dyer 43. p. 21. Moyle ver. Ewre. Hill.1 Jac. B. R. Roll 655. k.2. Leaſe. Roll 655. k.1.

If a Parſon ſow his ground, and then ſell the emblements, (I mean the Corn growing upon the ground) the buyer of the Corn ſhall pay the Tithe of it to the Parſon that ſowed and ſold the Corn.

So if a Parſon ſow his Glebe-Land, and then Leaſe the Land, the Tenant ſhall pay his Parſon Landlord Tithe of this Corn.

Co.10.88.b.* 21 H.6.30.a.

There has been ſome opinions, that if the Pariſhioner ſow his Lands, and before ſeverance the Parſon die, that in this caſe the Parſon's Executors, and not his Succeſſor, ſhould have the Tithes.

Uphaven ver. Humfries 40 El. per Poph. & Gaudy verſ. Fenner.

And there has been ſome Opinions, that if the Parſon ſow his Glebe, and die before

fore ſeverance, that his Executors ſhould not pay Tithes of this Corn.

To whom the Tithes in the Vacation belong.

But both theſe Caſes, if they had been Law, are put out of doubt by the Stat. of 28 *H.* 8. which hath given all the Tithes and other profits belonging to the Rectory to the Succeſſor from the death of the laſt Incumbent, which hath taken away all pretence the Executors could have in ſuch Caſes. But notwithſtanding this Statute, I take the Law to be clear, that the Executor of the Parſon ſhall have the Corn ſown by his Teſtator in his life time, as the Executors of other Tenants for life have by the Law.

St. 28. H. 8. c. 11.

Rolls 655. l. 3.

Whether the Vicar and Parſon ſhall pay to each other.

It hath been held, that the Vicar upon a general indowment ſhall not pay Tithes of his Glebe to the Parſon, or the fruits that ariſe from the ſame, *Quia decimas Eccleſiæ Eccleſiæ reddere non debet.*

Crompt. Caſe P. 7. Car. 1. B. R.

So if a Vicar be endowed of all the ſmall Tithes ariſing within the Pariſh, yet he ſhall not have the ſmall Tithes ariſing upon the Glebe-Lands of the Parſon.

Cro. El. 578.

Tithes may belong to a Chappel.

Tithes by preſcription may be appendant to an antient Chappel.

13 Aſſ. p. 2. Dyer 87.

CHAP.

CHAP. III.

The third Chapter shews of what things Tithes are due, and in what manner the Tithes of Hay and Corn are to be paid.

Of what things Tithes are to be paid. Co. 11. 160. F.N.B 53 E.

Tithes Regularly are to be paid of all things annually arising from the ground, either of themselves, or by the Culture and Industry of the Parishioner without any deduction of Averg. in their proper kinds, as soon as the same may be separated and divided from the nine parts in Sheaves Garbs or Heaps. But the manner and form of the payment of Tithes is for the most part governed by the Custom of the place: and therefore if by Custom the tenth part of Corn or Hay hath been measured forth growing upon the Lands, as 'tis in some parts of *Lincolnshire*, this manner of Tithing is to be observed; for in what manner soever the Tithe hath been paid time out of mind, in such manner it still ought to be paid; and therefore where Tithe Corn hath used to be paid time out mind in Sheaves or Garbs bound up, it is no good payment to leave it in bonds unbound, as I have known some contentious Parishioners do.

Lindwood c. *Quoniam propter verb. non debuit expersis.*

How Tithes of Corn are to be paid.

St. 27 H 8. c. 20.

32 H. 8. ca. 7.

So

So for the Tithe of Hay, If the Parishioner have used to make it into Hay-cocks before they have set forth their Tithes, they must do so still; but where there is no such Custom, they may set it forth in Grass-cocks. *How the Tythe of Hay is to be paid.* Roll 1. 644. y. 1256.

The same order ought to be observed in all other things arising from the Ground as Rape Saffron Apples, &c. and other fruit.

But no Tithes are to be paid for the Rakings of Corn, unless the Parishioner fraudulently scatter his Corn to cozen the Parson of his Tithes. *Rakings.* 2 Inst. 652. Cro El. 660. More 278. Crok. Jac. 421 Yelver. 86. Hetley 133.

Neither are Tithes to be paid of the aftermaths of Meadows, nor of balks in Corn Fields, or of the stubble of Corn: But if the Meadowing be so rich, that there is two crops of Hay got in one Year, or two crops of Woad, &c. there the Parson shall have Tithe as well of the later as of the former Crop. Rolls 1. 645. l. 11, 12, & 13. *Aftermaths.*

If a Man gather green pease to spend in his House, and there spend them in his Family, no Tithes shall be paid for the same; but if he gather them to sell or to feed Hogs, there Tithes shall be paid for them. Rolls 1. 647. a. 11, 12. *Green Pease.*

Neither shall Tith Hay be paid for the Grass growing upon head-Lands, which are only large enough for the turning of the Plow. *Headlands.* Roll 1. 646. l. 19.

But

2 Inſt. 652. *Orchards.*

But Tithe ſhall be paid of the Hay and Corn growing in Orchards, though the Tith of the fruit growing in them were paid the ſame Year, be it Apples Pears Cherries, &c.

More 683. Cro Jac. 47. *Fodder.*

There hath been ſome queſtion about fodder gotten in the fenn Lands in *Cambridgſhire* and elſewhere, and ſpent upon beaſts of the Plow and Pail, whether it ſhould pay Tithes or no; but it hath been reſolved, that Tithes ſhall as well be paid of this Fodder, as of other Hay ſpent upon the Beaſts of the Plow and Pail.

Graſs cut in Meadows for Beaſts of the Plow. Wells verſ. Crawly. T. 1. Car. 1. B. R.

But it has been reſolved, that for Graſs cut in Meadows to feed the Beaſts of the Plow, and not made into Hay, that Tithes ſhould not be paid thereof.

Tares Vetches cut green. Cro. Car. 393. Jones 357.

It hath been reſolved, that Tares Vetches, &c. cut green for the feeding Beaſts of the Plow, by Cuſtom may be freed from the payment of Tithes, but not without Cuſtom.

CHAP.

CHAP. IV.

The Fourth Chapter ſets forth where, and in what Caſes, and in what manner, the Tithes of Wood are to be paid.

How and where Tithe Wood is to be paid.

IN the time of *Stratford* Arch-Biſhop of *Canterbury*, in or about the 17*th* Year of the Raign of *E.* 3. 1343. there was a Provincial Canon or Declaration made to this effect.

Canon. Lindwood c. *Quanquam ex ſolventibus*, &c.

Declaramus proviſione concilii ſylvam cæduam illam fore, quæ cujuscunq; exiſtens generis arborum in hoc habetur ut cædatur, & quæ etiam ſucciſa rurſus ex ſtirpibus aut radicibus renaſcatur, ac ex ea decimam ut pote realem & prædialem parochialibus ſeu matricibus Eccleſiis perſolvendam, nec non Sylvarum poſſeſſores hujusmodi ad præſtationem decimarum Liguorum ipſorum Exciſorum in eis ſicut fœni & bladorum omni cenſura Eccleſiaſtica fore Canonice compellendos.

Exact Abridgment p. 40. *num.* 51. & ibid. 80. *num.* 37.

But in or about the ſame Year there was a Petition in Parliament, that no Man ſhould be impleaded in Court Chriſtian for the Tithes of Woods or under-Woods, but in places accuſtomed, which was anſwered; As heretofore, the ſame ſhall be. The

The like Petition was in the 25th Year of E. 3. and other Parliaments, till at the length in the 45th Year of the same King an Act of Parliament was made to this effect reciting,

St. 45. E. 3. c. 3. *Statute not to be paid of great Wood.*

That whereas they sell their great Wood of the age of twenty years or of greater age to Merchants to their own profit, and in aid of the King in his Wars, Parsons and Vicars of Holy Church do implead and draw the said Marchants in Suit in the Spiritual Court for the Tithes of the said Wood by the Name of Sylva cædua, *whereby they cannot sell their Woods to the very value, to the great dammage of them and the Realm. It is therefore by that Law ordained and established, that a Prohibition in this case shall be granted, and upon the same an Attachment, as hath been used before this time.*

By which it appeareth, that this Act of Parliament was but a Declaration of the Common Law, Prohibitions and Attachments thereupon in such case having been formerly used, and so was *Dalton's* opinion.

9 H. 6. 56. a. *. T. 27 E. 10. 28. a.

Prohibition in Point.

9 H. 6.

This Act of Parliament was after questioned by the Clergy pretending it did not pass as an Act of Parliament, but only as an Ordinance and so not binding. And thereupon the Commons in the next Parliament petitioned, that it might be enacted, that for Wood above twenty Years

50 E. 3. 10. a. *.

Exell Abridg. 118 nu. 21.

Years growth no Tithes ſhould be due, and that in all ſuch caſes a Prohibition might be granted. To which was anſwered, that ſuch Prohibition ſhould be granted as then before had been uſed.

But Sir *Edward Cook* in his Commentary upon *Magna Charta* does ſufficiently prove it was an Act of Parliament. 1. Becauſe it is entred upon the Parliament Roll amongſt other Acts of Parliament. 2. It is under the Title in that Roll of Statutes of *E.* 3. *Anno regni ſui* 45. 3. It was proclaimed with the reſt of the Acts of that Parliament. 4. It is penned in the form of an Act of Parliament, *viz.* (it is ordained and eſtabliſhed.) 5. It hath the conſent of the Lords and Commons. 6. There hath been infinite Prohibitions upon it. To which let me add, that in the Parliament of 8 *R.* 2. It was owned for an Act of Parliament, in which Parliament 'tis like many of the Perſons were preſent that were at the making of the ſaid Act.

2 Inſt. 643. 644.

8 R. 2. *Exact Abridgment of Records* nu. 21.

And in 9 *H.* 6. Exception was taken to the Prohibition, becauſe it was not grounded upon this Statute.

9 H. 6. 56.

And in the 11 *H.* 4. it was affirmed by *Thirming* to be an Act of Parliament and in force.

11 H. 4. 9. 2. Seld. hiſt. decim. 236.

But whoſoever deſires more ſatisfaction in this point, I refer them to Mr. *Selden's* Hiſtory of Tithes, and the other places mentioned in the margent. Not-

2 Inſt. 643. 644. Roll 1. 637. 638, 639.

Notwithstanding this Act, many questions were startled what was *Sylva cædua*, and many Petitions in Parliament to have it declared; to which I find no positive answers, but sometimes referred to usage, and sometimes the King took time to advise.

Sylva cædua quid.
50 E. 3. 10. b.

But *Belknap* a learned Judg, 50 E. 3. declares, that *Sylva cædua* is to be intended every manner of Wood that may be cut and will grow again: which all manner of Wood will do, as he there says, if it be preserved from Cattel; and therefore the Defendant in the Prohibition in that case was put to Traverse, that he sued not in the Spiritual Court for the Tithes of gross Woods.

So that the question at this day chiefly is, what shall be said gross Woods? To which question

2 Inst. 643.
What shall be said great Wood.
Contra Rolls 1. 640. q
Plo. 470. a. b.

The Judges of the Common Law have resolved, that all sort of Wood that is usually imployed for the building of Houses, Mils, *&c.* are gross Woods, and within this Statute: of which sort are Oak Ash Elm Beech Horse-beech and Horn-bean against the opinion in *Molyn's* case: Asp is likewise esteemed a gross Wood, being sometimes used for Timber; but for Willows Hasels Hollies Maples Birch Alders Thorns, *&c.* of what age or bigness soever they be, they are regularly to pay Tithes.

Contra Rolls 640 q. 7.
Hob. 288.
Rolls 640. q. 6. 7. 8.
Hob. 219.
Noy 30.
Cro. Jac 199.

But

But if they be cut for fencing of grounds, or for fewel to be ſpent in the Houſes of the owner within the ſame Pariſh, no Tithes ſhall be paid of them. Cro. El. 499. 609. 2 Inſt. 657. Cro. Car. 113. More 683.

But if by Cuſtom Tithes have been paid of ſuch Wood, the Cuſtom is to be obſerved. Roll 1. 644. z. 1, 2, 3.

Of what Wood Tithe ſhall not be paid.

So if a man cut Wood for the burning of Bricks, which are imployed for the repair of houſes and buildings of the owner within the ſame Pariſh, no Tithes ſhall be paid for it; but if he make Bricks to ſell, or for making of houſes of pleaſure, or other than for neceſſary Habitation, he ſhall pay Tithe for the Wood ſpent therein, if Tithable. Roll 1. 645. z. 8, 9.

Burning Bricks.

Roll 1. 645. z. 10.

Nurſeries.

If a man convert his Land into a Nurſery for fruit-trees or other trees, and ſell them for profit to ſuch as tranſplant them into other Pariſhes he ſhall pay Tithes of them. Roll 1. 637. E. 6. Cro. Car. 526. Jones. 416.

Grubbed Wood.

If a man cut his Coppice Wood, and pay Tithe of them, and ſoon after grub up the roots to cleanſe the ground, he ſhall not pay Tithes of them. Roll 1. 637. E. 7.

Upon the whole matter it is left a little uncertain, which ſhall be accompted groſs Wood; becauſe in ſome Countries almoſt the meaneſt ſort of Wood are uſed for building, and the Judgments in our books vary, ſome allowing one thing for Timber, which another contradicts; but the proper and undeniable Wood for Tim-

ber are Elm, Ash and Oak, which are used for Timber in all Countries and Places as Timber: It rests now to shew in what Cases such Wood as are accompted gross Wood shall pay Tithes.

If Oak, Ash, Elme, &c. which are esteemed Timber in the Countries where they grow, be cut under one and twenty years growth, they are accompted *Sylva cædua* and ought to pay Tithe.

Loppings of trees.
2 Inst. 643.
Cro. Jac. 100.
More 762.
Plow. 470. b.
Roll 1. 640. q. l. 3. 4.
Co. 11. 48. b.

But the Loppings of great Oaks, Ashes, &c. though the Lops be under twenty years growth, shall not pay Tithes; for they are priviledged by the bodies, neither shall Tithes be paid of the shoots and under-wood, which grows from the roots and stocks of such Timber-trees, and trees above the growth of twenty years, which have been felled.

Bark.
2 Inst. 643.
Co. 11. 49. a.

Nor shall Tithes be paid of the Bark of such Trees as are Timber-trees, and priviledged from the payment of Tithes.

2 Inst. 643.

But Tithes shall be paid of the mast, acorns, &c. of Timber-trees, because the same is of annual increase.

Dotards.
2 Inst. 643.
Cro. El. 477.
Roll 1. 640. q. 2.

Neither shall Tithes be paid of Timber-trees, which become dotard, and are become *arida, sicca, & non portans folia in æstate nec existens maberemium.*

Co. 11. 49. a.
Rolls 1. 640. q. 1.

If one lopp Oaks, Ash, &c. under twenty years of age, and after let them grow above twenty years of age, no Tithes shall

shall be paid of them or their Lops.

Wood mixt with great and Underwoods.

It hath been held, that if a Wood ground be mixt with Woods tithable, and Woods not tithable, and the greater part be such as are not tithable, it shall privilege the rest and pay no Tithe; but if the greater part be tithable it shall pay Tithe of such part as is tithable; for where the greater part is great Wood, the whole shall be called grand Wood *à majore.*

Parsons Law 99. T. 19. Jac. B. R. Buckhurst verſ. Newman *Parſon of* Staplehurſt. T. 36. El. B. R. *per Hesden.*

Who shall pay the Tithe of Wood.

It hath been a question amongst the Canonists, who shall pay the Tithes of Wood tithable, the buyer or the seller, Mr. *Lindwood* in his Gloss upon the Canon before recited, seems to be of opinion, that the buyer shall pay the Tithes, *Quia verum enim est quod decima sequitur fructus, & cum onere decimæ transferuntur fructus in alterum*, and this opinion of his seems reasonable, where the Owner of the wood sells the whole wood together, or parcels it out, and the buyers cut it; but if the Owner of the Wood cut it himself, and then sells it by parcels, there it seems reasonable, that the Owner of the Wood should pay the Tithe; but by the Common Law the Parson may sue the one or the other at his Election.

Lindwood c. *Quanquam ex silvestribus & verb. Sylvarum poss.* & cap. *Quia quidam maledictionis verb. asportan.*

Roll 1. 656. l. 1.

And it is to be observed, that a whole Province, County or Hundred may prescribe in *non decimando* of Woods, as in the Wilds of *Kent* and *Sussex* and other places; and therefore the Commons in

Roll 1. 637. f. *prescription of not Tithing of Wood.*

the 18 *El.* upon the making of the aforeſaid Canon moved in Parliament, that no man ſhould be drawn in Plea in the Court Chriſtian for the Tithes of Wood or Underwood, except in ſuch places where ſuch Tithes have been uſed to be paid; for by the ſtrict Letter of this Canon, Tithes were to have been paid of all manner of Wood great and ſmall in all places, to which the Anſwer is recorded, *Let it be done in this alſo, as has been done before time.*

Roll 1. 637. I.

The manner of paying Tithe Wood.

The manner of the payment of Tithe wood muſt either be by the meaſure of the ground by Poles, Pearches, *&c.* as 'tis in ſome parts of *Lincolnſhire*, or every tenth Faggot, Billet, *&c.* as 'tis paid of Corn and other things, but in this, as in all other Caſes, the Cuſtom of the place is to be obſerved.

White verſ. Arch. M. 15. Jac. C.B.

But no Tithe ſhall be paid of Wood cut for Hop Poles to be uſed in the ſame Pariſh, where the Parſon hath the Tithe of the Hops.

CHAP.

CHAP. V.

The Fifth Chapter ſhews where, and in what Caſes, Tithe is due for the herbage or agiſtment and Paſturage of Cattle, and who is to pay the ſame.

I Am now come to ſpeak of the Tithe of herbage, agiſtment or depaſturing of Cattle, for which I find no Canon, ſave a Clauſe of a Provincial Canon of *Robert Winchelſey*, dated 1305. in theſe words. *In what Caſes Tithe Herbage is due.*

De Paſturis autem & paſcuis tam non communibus quam communibus ſtatuimus, quòd decimæ fideliter perſolvantur, & hoc per numerum animalium & dierum, ut expedit Eccleſiæ. *The Canon.*

The Tithe of the Herbage or Agiſtment of Cattle is due, where the Owner or Farmer of any Lands, Depaſtures the ſame with barren Cattle, that yield no profit at all to the Parſon, which is a Tenth Part of the yearly value of the ground ſo eaten, but commonly a twentieth part is accepted, but in this, as in all other Tithes the Cuſtom and Uſage of the place is to be obſerved.

Cro.Car.237. 559. Jones 254. *Who shall pay it.*

If the Owner of the Land agist it with Forrainers Cattle, then the Owner of the Land shall pay the Herbage Tithe; but if he let the ground to a Tenant, then the Tenant is to pay it.

Cro El.365. 2 Inst.651. Cro.Car.237. 559. Roll 1.647.a. 9, 10. Roll 1.643. R.4. Bulst.1.171. Poph.126.142. Wild verf. Lampton. T.15. Jac. B. R.per 3 Inst. in Houghton. *Saddle horses.* Roll 1.646. a.4,5. *Beasts bred for the Plow and Pail.*

But no Herbage Tithe shall be paid for the Agistment of Beasts bred for the Plow and Payle, and so imployed in the same Parish; nor for Beasts fed and spent in the Owners house in the same Parish.

So if a man eat a ground with his own Saddle Horses, he shall pay no Tithes for the same; but if an Inn-keeper eat up a ground with Guest horses, he shall pay Tithes for the herbage of them.

If a Forrainer that lives in another Parish depastures a ground with Cattle bred for the Plow and Pail, to be imployed in a Forrain Parish, he shall pay Tithe for the agistment of such Cattle.

And there is no difference between the Case of a Parishioner and a Forrainer, where the ground is eaten with unprofitable Cattle, and not bred for the plow and pail, Saddle horses and fatting Cattle, as aforesaid to be spent in the Parishioners house; but that the Parishioner, as well as the stranger, shall pay Tithes; but for the breeding of Cattle for the plow and pail, &c. conduces to the profit of the Parson in his other Tithes.

No

No Tithe is due to the Parſon for the herbage of beaſts *feræ naturæ*, as Deer, Conys, &c. without a ſpecial Cuſtom. 2 Inſt. 651. *Herbage of Beaſt feræ naturæ.*

Fitzherbert in his *natura brevium* ſeems to be of opinion, that there is no Tithe due for the herbage or agiſtment of Cattle, and adds this reaſon, becauſe they pay Tithe of the Cattle there depaſtured, which proves his meaning to be, that there is no Tithe herbage due, where the ground is depaſtured with profitable Cattle. F.N.B. 53 g.

If a ground be eaten with profitable Cattle, as milch Cows, Yews, Lambs and Cattle bred for plow and pail, &c. and alſo with barren and unprofitable Cattle, and the profitable Cattle exceed in number, it ſhould ſeem the greater part being profitable ſhould free the reſt, *tamen inde quære.* *Paſture eaten with mixt Cattle.* Roll 1. 641. q. 20. *Quære.*

No Tithe Herbage is to be paid of the Agiſtment of Oxen, Horſes or Beaſts of the plow imployed and uſed in the ſame Pariſh, for they are profitable Cattle to the Parſon. Roll 1. 646. a. 6, 7. *Beaſts of the Plow.*

If a ground be eaten with barren and unprofitable Cattel, and profitable Cattel together, and the profitable Cattel are the leſs in number; I conceive there's no doubt but the Land holder muſt pay Tithe in kind for the profitable Cattel, and Tithe of the herbage for the reſt, and not herbage for the whole. *Ground eaten with mixt Cattle.*

Tares and Vetches eaten green.

If there be a Custom in a Country to sow Tares, Vetches, &c. and to eat them green upon the ground before they are ripe, with Horses and Beasts of the Plow, no Tithes shall be paid for the same.

Roll 1.646.a. 6,7

Roll 1.647.a. 8.and 16.

Of what Cattel herbage is due.

If a Stranger or a Parishioner buy barren Cattel, and depasture and feed them for sale, he shall pay Tithe for the herbage of them.

Roll 1.647.a. 13.

If a Man buy Oxen, Steers or Horses, and depastures and after sells them, and doth not without fraud imploy them in the Plow, he shall pay Tithes for their agistment: and if he work them fraudulently to defeat the Parson of his Tithes, it will not serve his turn.

Roll 1.647.a. 15.

So if a man buys or rears young Cattel, and depastures them in a Parish, and do not imploy them there for the Plow or Pail without fraud, as hath been said, he shall pay Tithe for the herbage of them.

P.7.Jac.C.B. Parsons' Law.

But for the Grass of Fallows no Herbage shall be paid, because it is for the bettering of the Parson's Tithes in the Year following.

CHAP.

CHAP. VI.

The Sixth Chapter ſhews where, and in what manner, the Tithes of Calves, Milk, Cheeſe, Wool, Lambs, Piggs, &c. are payable.

How the Tithes of Calves, milk, wool, Lambs, &c. are to be paid.

IN the payment of theſe ſort of Tithes I do not obſerve that the Common Law croſſes the Canon in any thing material, and therefore I ſhall recite you the Provincial Canon made by *Robert Winchelſey*. And his Clergy *Anno Dom.* 1305. which is to this effect.

The Canon. Lindwood c. *Quoniam propter.*

De nutrimentis autem animalium ſcilicet de agnis, ſtatuimus, quòd pro ſex agnis & infra, ſex oboli dentur pro decima, ſi ſeptem ſint agni in numero ſeptimus Agnus detur pro decima Rectori: ita tamen quòd Rector Eccleſiæ qui ſeptimum Agnum recipit, tres obolos in recompenſationem ſolvat parochiano a quo decimam recipit: Qui octavum recepit, det denarium: Qui vero nonum, det obolum parochiano, vel expectet Rector uſque ad alium annum, donec plenariè decimum agnum poſſit recipere ſi maluerit; & qui ita expectat ſemper exigat ſecundum Agnum meliorem vel tertium ad minus de agnis ſecundi Anni, Et hoc pro expectatione primi anni. Et ita intelligendum eſt de decima

decima lanæ: Sed ſi oves alibi in Hyeme & alibi in Æſtate nutriuntur, dividenda eſt decima; ſimiliter ſi quis medio tempore emerit vel vendiderit oves & certum ſit à qua parochia illæ oves venerint, earundem dividenda eſt decima, ſicut de re quæ ſequitur duo domicilia: ſi autem incertum fuerit, habeat illa Eccleſia totam decimam, infra cujus limites tempore tonſionis inveniuntur. De lacte vero volumus quod decima ſolvatur dum durat, videlicet de caſeo tempore ſuo, & de lacte autumno & Hyeme, niſi parochiani velint pro talibus facere competentem redemptionem & hoc ad valorem decimæ & commodum Eccleſiæ.

How Wool and Lamb is to be paid.

By this Canon the payment of the Tithes of Wool and Lambs is ſetled in this manner, that if the Pariſhioner have under ſeven Lambs or Fleeces he ſhall pay a half peny for every Lamb and Fleece, and if there be ſeven Lambs or Fleeces, and under ten, then the Parſon or &c. is to allow a half peny for every one that is wanting; but where this Canon gives the Rector election to take his Tithe in this manner, or let them run on till a Lamb or Fleece be due in the enſuing Year, that is not allowed by our Law; for Tithes muſt be paid annually; where Sheep are kept in one Pariſh in Summer, and another in Winter, the Tithes are to be divided: So if one buy in Sheep out of another Pariſh, the Tithe is to be divided;

P. 14. El. Harpurs Rep.

that

that is, to each Rector, &c. his proportion for the time they were reſpectively kept in the reſpective Pariſhes; but if it be not known from whence Sheep ſo bought in, came, then the whole Tithe is to be paid, where the Lambs fall, and the Sheep are ſhorn.

By the Canon the Tithe of Milk is to be paid in Cheeſe whilſt the Pariſhioner makes Cheeſe; but in Autumn and Winter, it is to be paid in kind: but this part of the Canon is generally overruled by the Cuſtom of the place; for in many places they pay the Milk in kind all the year, in ſome places they pay only Cheeſe, and in ſome neither Cheeſe nor Milk, but ſome ſmall rate for it: and in ſome Countries they preſcribe to pay no Tithe of their Milk at all; and the Cuſtom of the place in this, as in all other Tithing, is to be obſerved notwithſtanding the Canon: but for the better explanation of the meaning of this Canon there was a ſecond Canon made, but the date thereof I cannot attain to, the tenor whereof follows.

Quoniam, ut audivimus, ſuper decimis & nutrimentis animalium inter Eccleſiarum Rectores propter amotiones pecorum ad diverſarum parochiarum paſturas diverſis anni temporibus contentiones multimodæ oriuntur: Nos viam pacis præparare volentes, ſtatuendo definimus & definiendo ſtatuimus

Lindwood c. *Quoniam audivimus.* *Canon where Sheep, &c. ſhift their Paſture from one Pariſh to another.*

tuimus quod ad Ecclesias in quarum parochiis oves à tempore concionis usq; ad festum sancti Martini *in Hyeme continuè pascuntur & cubant, Decima lanæ lactis & caseï ejusdem temporis licet postea amotæ fuerint ab illa parochia & alibi tondeantur, integre persolvatur, & nè fraus fiat in casu prædicto præcipimus, quod antequam oves amoveantur à pasturis vel etiam distrahantur, Ecclesiarum Rectoribus sufficienter de solvenda decima caveatur. Quod si infra prædictum tempus ad diversorum parochiarum pasturam transferantur, quælibet Ecclesia pro rata temporis portione decimam percipiet earundem minori triginta dierum spatio in rata temporis minime computando. Si vero per totum tempus prædictum cubant in una parochia & pascantur continuè in alia, inter ipsas Ecclesias decima dividatur. Quod si post festum sancti* Martini *ducantur ad pascua aliena, & usque ad tempus tonsionis in una vel diversis parochiis sint in propriis pasturis dominorum suorum sive alterius cujuscunque pascantur, habita ratione ad numerum ovium pascua æstimentur & secundum æstimationem pascuorum ab eorum dominis exigantur decimæ. Decima vero lactis & caseï de vaccis & capris provenientis ubi cubant & pascuntur, ibi solvatur. Alioquin si cubant in una parochia & pascuntur in alia parochia, decima inter Rectores dividatur omnino. Agni vero, vituli, pulli Equini & alii fœtus decimales habita ratione ad*

loca

loca diverſa ubi giguuntur, oriuntur & nutriuntur, & ad moram quam traxerint in eisdem, particulariter decimentur. Quid vero pro decima debeatur ubi lac propter pauci- Milk and
tatem vaccarum vel ovium ad caſeum fa- Cheeſe.
ciendum non ſufficit; Et quid pro agnis, vitulis, pullis equinis, velleribus, aucis, aut aliis hujuſmodi, de quibus propter eorum modicitatem decima certa dari non poteſt, conſuetudini locorum duximus relinquendum. Item præcipimus quod ſi quis poſt feſtum ſancti Martini *oves occiderit, vel ſi oves quovis caſu fortuito moriantur, Decimam legitimam parochiali Eccleſiæ ſolvere non poſtponunt. Et ſi oves extraneæ in alienjus parochia tondeantur, Decima ibidem tradetur Rectori Eccleſiæ, niſi ſufficienter doceri poſſet quod pro decima alibi ſatisfactum ut ſolutionem ibidem faciendam modo legitimo valeat impedire.*

There may ſome queſtion be made upon *Verbo integrè.* the firſt Paragraph of this Canon, whether the Rector where the Sheep are kept from ſheering till Martlemas ſhould have the whole Tithe of the Sheep for the whole Year: but Mr. *Lindwood* in his Gloſs conceives it is intended the whole Tithe that ariſeth during that time, which for Sheep will be nothing at all; but certainly it were very unreaſonable that the Rector of the Pariſh where Cattel are kept but for half the Year, ſhould have the whole Tithes, and it cannot be intended

to

to be any more than the proportion for the time they are so kept.

Sheep kept less than thirty days.

But by this Canon, if Sheep be kept less than thirty days in any Parish, no rate is to be allowed to the Rector of that Parish where they are kept so small a time.

If Sheep be bought in a little before share day, and it is not known that they answer the Tithes elsewhere, the whole is to be delivered to the Rector of the Parish where they are shorn.

Where the Milk is so little that it will not make Cheese, or the Calves, Lambs, Fleeces, Colts, Geese, &c. are so few in number that there will none fall to the Parson, the Canon gives no rule of Tithing in that case, but refers it to the Custom of the place: but the Canonists generally hold, that Custom to pay less then a tenth part is not binding; for says *Lindwood*, *Quod laici minus solvant quam decimam, non potest consuetudine introduci quia esset contra jus divinum plus tamen potest deberi ex consuetudine.* And concludes, *Quod autem hic loquitur de consuetudine locorum, intelligas de tali consuetudine quæ non excludit solutionem decimæ, sed de tali quæ limitat ipsius decimæ solutionem ad commodum Ecclesiæ, scilicet ad verum valorem vel amplius*; herein I perceive the Canonists and Common Lawyers agree, that a Custom to be free from payment of any

Custom to pay less than the value of the Tithe.

Verb. Consuet. loc.

Tithe

Tithe, or a rate for it, is not good, except it extend to a whole Country, County, &c. and that where there is competent livelyhood for the Miniſter beſide; but the Common Law allows of Cuſtoms and Preſcriptions, where money or ſome other thing is paid in lieu of Tithes, though not to the full value, as ſhall hereafter be made appear in it's proper place.

By this Canon 'tis provided, that where Cows feed in one Pariſh, and lodge in another, that the Tithes ſhall be divided.

For the Tithes of Lambs, Calves, Colts, &c. the Tithe of them by this Canon is to be apportioned with reſpect to the places where they were engendred, brought forth and nouriſhed.

If a mans Sheep dye or be killed after *Martlemas*, a proportionable Tithe muſt be paid for them.

The time when Calves, Lambs, Piggs, &c. are to be paid.

The time of the payment of Lambs, Kids, Calves, Pigs, &c. is regularly when they are ſo old, that they may be weaned and live without the Dam, unleſs the Cuſtom of the place confine the payment to any certain time or age, and Wool is to be paid at Sheerday.

Lindwood c. *Quoniam prop. ter verb. lanæ-*

If ſeveral mens Sheep depaſture together in one flock, or under one Shepheard, yet this ſhall not make them to be tithed together, but every Owner ſhall pay his Tithe of them by himſelf, but if the head of

Several mens Sheep depasture together.

of a Family have his flock mixt with his Childrens Sheep which are under his tuition, and he takes the profit of them to his own use in that case they shall be tithed together.

Cro.El.363. T.. *Wool locks.*

It hath been resolved that where Tithe Fleeces of Wool are paid, there shall be no Tithe paid of the locks and belts

Roll 1.645.2. 14,15,16. Bulstrode.1.3. 242. *Neckings.*

There is a Custom in some Countries to sheer their Sheep about the necks at Michaelmas, that the Wool may not in Winter be pulled off with Bryers, and for this sort of Wool without fraud, it hath been held that no Tithe shall be paid, and so of the birling of Sheep without fraud, no Tithe is to be paid.

Roll 1.646. 2.17.

Roll 1.646. 2.18. *Sheep dye of the Rot.*

If a Man's Sheep dye of the Rot or other disease, or if the owner kill or sell them as hath been said, he must pay Tithe for the Wool ratably.

Though the Canon direct one at seven to be paid only for Wool and Lambs, yet in most places the same order by Custom is observed for Calves, Colts, Pigs, Geese, &c. which Custom I presume took its rise and beginning from this Canon.

Lindw.cap. *Quoniam propter verbis de Caseo.*

And note that where Tithe-Milk is paid in kind, there no Tithe Cheese is due, and so where Tithe Cheese is paid for so long, no Tithe Milk is to be paid.

Lastly,

Laſtly, note, that where any Perſon hath Cattel Tithable going in a Ground or Common whereof the Pariſh is not known, the Tithe is to be paid in the Pariſh or place where the party lives that owns the Cattel. Stat. 2. E. 6. c. 13.

CHAP. VII.

The Seventh Chapter ſhews where, and in what manner, the Tithes of Seeds, Fruit, Maſt, Bees, &c. is to be paid.

How the Tithe of Seed, Fruit, Maſt, Bees, &c. is to be paid.

TIthes are to be paid of the fruits ariſing in Orchards and Gardens in their proper kinds when gathered, unleſs there be ſome *modus* or rate Tithe paid in lieu thereof, and ſo of the Seed of flax, hemp, &c. is to be paid when dreſt up; the Tithe of Crabs, Maſt, &c. is likewiſe to be paid, when the ſame are gathered, or ſatisfaction is to be given if eaten with ſwine on the ground, and the Tithe of Bees is to be paid by the tenth part of the Honey and Wax, the Canon is that

Roll 1. 640. q. 10. Cro. Car. 559. Jones 447. Ant. 51. 8. Roll 1. 639. c. 1.

De Apibus ſicut de omnibus aliis bonis juſtè acquiſitis quæ renovantur per annum ſtatuimus, quod decimæ ſolvantur & exigantur debito modo. Cap. *Quoniam propter.*

CHAP. VIII.

The Eight Chapter shews where, and in what manner, Tithes of Pigeons, Coneys, Fish, Deer and other Beasts and Birds feræ naturæ, *are Tithable.*

Whether Tythe be due of beasts and birds feræ naturæ. Cro. Car. 264. 339. Roll 1.635.c. 4. 6, 7. Noy 108. St. 2 E. 6. c. 13.

BY the Common Laws of *England* there is no Tithe due for Birds or Beasts that are *feræ naturæ*, and therefore it hath been resolved, that no Tithe shall be paid for fish taken out of the Sea or River, unless by Custom as in *Wales*, *Ireland*, *Yarmouth*, &c. neither, for the same reason, is any Tithe due of Deer, Coneys, &c. but if due by Custom it must be paid.

Roll 1.635.c. 3.

And if a man keep Pheasants, or other wild Fowl within limits by clipping their wings, yet no Tithes shall be paid of their Eggs or Young not being reclaimed, for as much as if their wings were not cut they would fly away.

Roll 1.636.c. 8.

Hetley 147.

But of young Pigeons in Dovecoats or in Pigeon-holes about a mans house, Tithe shall be paid, if they be sold; but if they be spent in the Family, no Tithe shall be paid for them.

It

It is ſaid in *Hughton* and *Princes* Caſe in *More*'s Reports, that no Tithes ſhall be paid of tame Turkeys, Pheaſants or Partridges, nor their Eggs, *quia ſera natura*, but I believe the Book is miſprinted, for after they are reclaimed, they cannot be ſaid to be *ſera natura*. More 538.

CHAP. IX.

The Ninth Chapter ſhews, what Tithes are to be paid for Mills, and what kind and nature they be of.

THe Canon is, *De proventibus autem molendinorum volumus quod decimæ fideliter & integrè ſolvantur.* *Whether Tithes are to be paid of mills, and how.*

And *Articuli Cleri cap.* 5. is to this purpoſe.

Si quis in fundo ſuo molendinum erexit de novo, & poſtea à Rectore loci exigatur decima de eodem, exhibetur Regia prohibitio ſub hac forma. Quia de tali molendino hactenus non fuerunt ſolutæ, prohibemus, &c. Et ſententiam excommunicationis, ſi quam hac occaſione promulgaveritis, revocetis omnino. Reſponſio: In tali caſu nunquam exivit Regia Prohibitio de principis voluntate, qui & decernit talem perpetuo non exire.

2 Inſt. 632.

It is made a queſtion firſt, whether any Tithes are due for Mills or not, which Sir *Edward Coke* in his ſecond Inſtitutes ſays, was never judicially determined that he knows of, and it was held in the Caſe of a Fulling Mill no Tithe was due; for of profits that come only by the labour and induſtry of man no Tithe is to be paid, and the ſame reaſon holds for Corn-Mills.

Cro. Car. 523. 524.

The next queſtion is, admitting, that Tithes are due for mills, whether the ſame be predial or perſonal.

Sir *Edward Coke* is of opinion, that in Caſe any Tithe be due, it is only a perſonal Tithe, being acquired by the labour and induſtry of the miller, and takes no Increaſe from the ground to make it predial: And the Statute of 2 E. 6. is, that every perſon ſhall juſtly ſet forth, yield and pay all predial Tithes in their proper kinds, as they ariſe and happen, which cannot be applyed to the Millers taking of the Toll diſh, nor to Fulling Mills, Iron Mills, Paper Mills, *&c.* which are all comprehended under the word mill; and no Tithe can be paid *in ſpecie*, for if the Parſon ſhould have every tenth Toll diſh, then it would often happen, that he ſhould have twice Tithe of the ſame Corn, which is againſt the Law, and ſuch Tithe as the Tenth Toll diſh has never been

been paid in any place, that I have known or heard of.

And if it be a perſonal Tithe, as there is great reaſon that it can be no other, then it muſt be paid with the deduction of the expences and charges, and is not payable but in ſuch places, where perſonal Tithes are payable by Cuſtom: See more thereof in the twenty ſecond Chapter.

But the Canoniſts hold, That the tenth Toll diſh ſhall be paid as a predial Tithe without deduction of expences.

CHAP. X.

The Tenth Chapter ſhews, whether Tithes ought to be paid of Hawking, Hunting, Fiſhing, Fowling, &c.

Tithe of Hawking, Hunting, Fiſhing, Fowling if due.

THeſe are all comprehended under Perſonal Tithes, ſo that theſe things being obtained by the labour and induſtry of the Party, and the things obtained are *feræ naturæ*, and not of their own nature tithable in their proper kind, unleſs the particular Cuſtom of the place require it, and therefore I ſhall refer theſe to the twenty ſecond Chapter, where I ſhall ſpeak of Perſonal Tithes.

CHAP. XI.

The Eleventh Chapter is concerning the Tithes of Ducks, Geese, Hens, Swans, and other domestick Fowls and Birds.

Of the Tithe of domestick Birds and Fowl.

THE Tithe of all tame and domestick Fowl is to be paid in their Eggs, or Young in their proper kind, according to the Custom of the place: Geese, Ducks and Swans are usually paid in their kind, but of Hens and Turkeys, commonly in Eggs, but therein the Custom of the place is to be observed; but note, that where they pay Tithe of the Eggs, there is no Tithe of the Young; *e converso* Tithe Eggs paid, where they have the Tithe of the Young.

CHAP. XII.

The Twelfth Chapter ſhews, of what things Tithe ſhall not be paid.

Of what things Tithes ſhall not be paid.

Co. 11. 16. 2. Hob. 11.

TIthes regularly are not due of dwelling houſes, and yet a *modus* may be due for a houſe as well as for land, and it ſhall be intended, that it was a *modus* for the land before the houſe was built.

Things of pleaſure.

12 H. 8. 4. b. 2 Inſt. 651.

No Tithes ſhall be paid for Hounds, Apes, Popinjayes, & *ſimilia*, becauſe they are things only of pleaſure.

Things that increaſe not.

Roll 1. 636. d. 1. Doct. & Stud. 174.

Neither ſhall any Tithes be paid of thoſe things, which do not increaſe from year to year, and therefore no Tithes ſhall be paid for ſtone got out of Quarries, Pit-coals, Turfs, Slates, Bricks, Quarrels, Eyles, earthen Pots, nor of any thing made of the earth, nor of marle or lime, got for the Improvement of the ground, nor of Tynn, Lead, Copper or other Metal gotten out of the ground, but by Cuſtom Tithes of ſuch things may be due and payable.

Cro. El. 277. More 908. 2 Inſt. 651. Roll 1. 637. Et Doct. and Stud. 174. Baxter verſ. Hope. H. 8. Jac. C. B. ro. 1109. St. 2. E. 6. c. 13.

Servants in Husbandry ſhall not pay perſonal Tithes, neither ſhall any Tithes be paid of marriage goods.

No Tithes ſhall be paid of aftermaths, Stubbles or Rakings of Corn without fraud.

Rolls 1. 640. 9. 12, 13, 16, 17.

No Tithes ſhall be paid of birds, or beaſts, that are *feræ naturæ*, &c.

CHAP.

CHAP. XIII.

The Thirteenth Chapter ſhews, what Force Cuſtom has as well in the form and manner of Tithing as in the diſcharge of the payment thereof, and wherein Cuſtom and Preſcription differ.

What force Cuſtom has in the manner of Tithing.

BY the Statute of 2 E. 6. it is enacted, that every of the King's Subjects ſhould from thenceforth truly and juſtly, without fraud or guile divide, ſet out, yield and pay all manner of their predial Tithes in their proper kinds, as they ſhould ariſe and happen in ſuch manner and form as had been of right yielded and paid within forty Years next before the making of the ſaid Act, or which of right or of cuſtom ought to have been paid. Stat. 2 E. 6. c. 13.

In this Act there are three qualifications. 1. It enjoyns the payment of ſuch Tithes as had for forty Years then paſt been of right yielded and paid. 2. ſuch as of right ought to have been paid. 3. ſuch as by Cuſtom ought to have been paid.

Tithes due by Cuſtom are of two kinds. 1. where there is a *modus decimandi*, and by Cuſtom Money or ſome other thing is paid in lieu of the Tithes. 2. where

Tithe

Tithe hath by Custom been paid of things not Tithable, as of Lead in *Derbyshire*, Tynn in *Devonshire* and *Cornwall*, fishing in the Sea, as in *Southwales* where the Custom is, that if the Parishioner of one Parish land his fish in another, the Tithes are divided between the Parson of the Parish where the fisher lives, and the other where he landed his fish; but if the Parishioner land his fish in the Parish where he himself dwells, then the Rector of that Parish has the whole Tithes.

And this is confirmed by the Stat. of 2 E.6. cap. 13

Tithe-Ale. Roll 1.642.

And I have heard that in some Countries they pay Tithe Ale, and Tithe of Limekilns, &c. which in their own natures are not Tithable.

And as by custom things may be made Tithable which in their own natures are not so: or one thing may by custom, be paid in satisfaction or discharge of another; so custom hath a great influence upon the form and manner of Tithing, for the direction of the time, place, and order of payment of Tithes.

Custom of not Tything must have good.

And as custom may make things Tithable, which of their own nature are not Tithable, so a Custom of a Province, County or Hundred may discharge the payment of Tithe, of a thing in its own nature Tithable, so there be a competency for the maintainance of the Ministry beside.

And

And therefore in the wilds of *Kent* and *Suſſex* they do pretend by Cuſtom to be free from payment of Tithe Wood, or any thing in lieu of it, and ſo in ſeveral Countries they pay no Tithe of their Milk. Hob. 266. Bulſt. 2. 285. Doct. & Stud. cap. ult. Roll 1. 642. b. 1. & p. 5, 6, 8. Co. 11. 16. a.

And as Cuſtom may prevail in not Tithing, ſo it may, as has been ſaid, make things Tithable which in their own natures are not Tithable, as the Rents of Houſes, Pigeons eaten in the Houſe, Wood ſpent in the Houſe, and by Cuſtom Tithe may be paid of Salt, Brick, Lime, Ale, Chickens and other things not Tithable. *Cuſtom to pay Tithes of things not Tithable.*

Now the difference between a Cuſtom and a preſcription is this, every Cuſtom muſt have dimenſion and alledged to be within ſome certain Province, County, City, Hundred, *&c.* for if it be a general Cuſtom of *England*, it is Common Law, and ſuch Cuſtom muſt be common to all within ſuch limits; but if it be confined to one certain Perſon, Houſe, Land, or other thing, there it becomes a preſcription which is a younger daughter to Cuſtom; and therefore when a Man comes to plead a Cuſtom, the manner of pleading is to alledg, that within ſuch a County, Hundred or Town, there is, and from the time whereof in the memory of Man is not to the contrary, there hath been ſuch a Cuſtom uſed and approved in the ſame, that is to ſay, that, *&c.* alledging the Cuſtom as it is. *Difference between Cuſtom and Preſcription.*

But

How to plead a Prescription.

But when you come to plead a prescription you only alledg that you and all those whose Estate you have in such Lands have time out of mind paid so much annually to the Parson of *D.* in full satisfaction and exoneration of all the Tithes arising upon the said Lands, *&c.*

Wherein Custom and Prescription differ.

So that Custom and prescription differ in these things, that Custom must be limited and confined to some certain place; prescription is at large, Custom is common to all the Persons and Lands within the limits wherein it is alledged, but Prescription is confined to certain Persons or things; but in this they agree, that they must be constant without interruption, and perpetual from the time whereof the memory of Man is not to the contrary: for if there have been frequent interruptions, there can be no Custom or Prescription obtained, but after a Custom or Prescription is once duly obtained, a disturbance for ten or twenty Years shall not destroy it; for *Multiplex interruptio non tollit præscriptionem semel obtentam.*

1 Inst. 114. b.
2 Inst. 653.
2 Inst. 654.

How the Ecclesiastical Laws look upon Customs and Prescriptions.

In what they differ from the Common Law in this matter.

But I must here observe to the Reader, that though the Civil and Ecclesiastical Laws do in some cases take notice of Custom and Prescription, yet in this they differ from the Common Law, that they allow a usage for forty Years to be a good proof of a Custom or Prescription, grounding their judgments upon a decretal Epistle

piſtle of Pope *Alexander* the third *Anno Domini* 1180. But this Kingdom never allowed of that Epiſtle, or yielded any obedience thereunto, ſo that as well in Spiritual as Temporal Preſcriptions and Cuſtoms if they come to be tried at Common Law, as all Preſcriptions concerning Tithes muſt be, they muſt be proved to have been uſed beyond the memory of any Man to the contrary: for if any Man living, or any authentick Record, or other evidence prove it was otherwiſe at any time ſince the firſt Year of *Richard* the firſt, which was *Anno Domini* 1189. the Cuſtom or Preſcription fails. 2 Inſt. 653.

What Influence Cuſtom and Preſcription have in the manner of Tithing.

And the Influence, Cuſtom, and Preſcription have in the Manner of Tithing is confirmed by three ſeveral Acts of Parliament.

Firſt, by the Stat. of 27 H. 8. *whereby it is enacted, that every Subject of* England, *&c. according to the Eccleſiaſtical Laws and Ordinances of the Church of* England, *and after the laudable Uſages and Cuſtoms of the Pariſh or other place where he dwelleth, or occupieth, ſhall yield and pay his Tithes, Offerings, and other duties of Holy Church*, &c. 27 H. 8. c. 20.

By this Statute the Eccleſiaſtical Laws and Canons are affirmed for the payment of Tithes; but in ſuch caſes as they are contrary to the Common-Law, or Cuſtoms of the place, they do not bind.

Next

Next this Act confirms and allows all Uſages and Cuſtoms of the place where the Tithes ariſe, which are to be preferred before all Canons and conſtitutions in the manner of Tithing.

32 H.8.c.7. *The next Statute is that of* 32 H. 8. *whereby it is enacted, That every Perſon,* &c. *ſhall fully, truly, and effectually, ſet out, yield or pay all and ſingular Tithes and offerings aforeſaid, according to the Lawful Cuſtoms and uſages of the Pariſhes and places where ſuch Tithes or duties ſhould grow, ariſe, come, or be due.*

This Act ſeems only to extend to cuſtomary Tithes, and ſo doth the Statute of 2 E. 6. which is,

2 E.6.c.13. *That every of the King's Subjects ſhould from thenceforth, truly and juſtly, without fraud or guile, divide, ſet out, yield and pay all manner of their predial Tithes in their proper kind as they ariſe and happen, in ſuch manner and form as hath been of right yielded and paid within forty Years next before the making of the ſaid Act, or of right or Cuſtom ought to have been paid.*

But more of theſe Statutes in their proper place. I ſhall now proceed to ſhew what liberty and priviledg the Parſon, Vicar, &c. hath in the grounds where the Tithes ariſe, for the drying, ordering, and carrying away their Tithes.

CHAP.

CHAP. XIV.

The Fourteenth Chapter ſhews, what Priviledg and Liberty the Parſon, Vicar, &c. hath in the ground, where the Tithes ariſe, for the drying, making, ordering and carrying away the ſame.

BY the Stat. of 2 E. 6. *It is enacted, that at the Tithing time of Predial Tithes, it ſhould be lawful for every party to whom any Tithes ought to be paid, or his Deputy, or Servant, to ſee the ſaid Tithes to be ſet forth and ſevered from the nine parts, and the ſame quietly to take and carry away.* 2 E. 6. cap. 13. *What Priviledg the Parſon, &c. hath in the Lands where the Tithes grow.*

This Statute as to the taking and carrying away, ſeems only declarative of the Common Law, but as to comeing upon the Lands to ſee the Tithes ſet forth, ſeems to me to be a new Authority given by this Law, for the owners of the Land are *de jure*, bound to ſet forth their Tithes duly and rightly; and if they fail therein, the Parſon, Vicar, *&c.* have their remedies, and if the Pariſhioner do juſtly and truly ſet forth his Tithes, although the Parſon, Vicar, *&c.* be not preſent, or had no notice given him to be preſent, yet this had been a good ſetting forth before this Statute:

tute: but it is a fair and juſt way to do it in the preſence of the Parſon, Vicar, &c. And note, this Act is warily penned in the ſingular number, that the party himſelf, his Agent or Servant may come to ſee the Tithes ſet forth, but muſt not come with a greater number.

And note, that the Parſon, Vicar, Impropriator or Farmer cannot come himſelf and ſet forth the Tithes without the Licence and conſent of the owner of the Corn, Hay, &c. for if the Parſon, Vicar, &c. ſhall of his own head Tithe the Corn, Hay, &c. of any Landholder within his Pariſh, &c. and carry it away, he is a Treſpaſſor, and an Action will lye againſt him for it.

But a Parſon, Vicar, &c. may *de communi jure*, after the Tithes are ſet forth come himſelf, or his Servants, and ſpread abroad, dry and ſtack his Corn, Hay, &c. in any convenient place or places upon the ground where the ſame grew, till the ſame be ſufficiently weathered and fit to be carried into the Barn, &c. but the Parſon, Vicar, &c. muſt not take a longer time for the doing thereof than what is convenient and neceſſary, and what ſhall be ſaid a convenient and neceſſary time, the Law doth not, nor can define for the quantity of Hay, Corn, &c. and the weather in this caſe is to be conſidered, and what ſhall in this, and all other

12 E. 4. 6. 2. Roll 1. 643. x. 2.

other cases of like nature be said, a reasonable and convenient time is to be determined by the Jury, if the point come in issue triable by a Jury; but if it come to be determined upon a demurrer, or other matter of Law, the Judges of the Court where the Cause depends are to resolve the same.

And if the Parson, Vicar, &c. shall exceed a convenient and necessary time in the drying, ordering, and carrying away their Tithes; and the Parishioner shall receive dammage thereby, an Action of the Case will lye against them for their negligence in this behalf. Hughes Rep. 329. Styles 342.

But no Action will lye against the Parson, Vicar, &c. in such a case, unless the Parishioner have duly set forth his Tithe and given notice thereof to the Parson, Vicar, &c. Stiles 342. Lampen verſ. Woodnot F.8. Car. 1. B.R. per Latch.

And the Parson, Vicar, &c. may carry his Tithes from the ground where they grew, either by the Common way or any such way as the owner of the Land useth to carry away his nine parts. Halsey verſ. Halsey. H.6. Car. 1. B. R. Roll 1. 643. n. 3.

But if the owner of the Soyl, after he has duly set forth his Tithes will stop up the wayes, and not suffer the Parson, Vicar, &c. to carry away his Tithes, or to spread, dry and stack them upon the Land, this is no good setting forth of his Tithes without fraud, within the Statute of 2 E. 6. but that the Parson, Vicar, &c. or other

Owner or Farmer may have an action upon the said Statute, and may recover the treble value, or may have an Action of the Case for such disturbance, as I conceive, or he may, if he will, break open the Gate fence, &c. which hinders him, and carry away his Tithes, but in that he must be cautious that he commit no Riot, nor break any Gate, Rails, Lock, Hedges more than necessarily he must for his passage.

Bulst. 1. 108.

And note, that the Parson, Vicar, &c. when he comes with his Carts, Teams or other Carriages to carry away his Tithes, must not suffer his Horses, Oxen, &c. to eat and depasture the Grass growing in the grounds, where the Tithes arise, much less the Corn there growing or cut, but if his Cattle (as cannot be avoided) do in their passage against the Will of the Drivers here and there snatch some of the Grass, &c. in their passage, this is excusable.

CHAP.

CHAP. XV.

The Fifteenth Chapter ſhews, to what Charges the Glebe lands belonging to a Rectory, the Tithes are Subject.

SIR *Edward Coke* tells us, *Quod nullus pro decimis quæ ſunt Spirituales de aliqua reparatione pontis, ſeu aliquibus oneribus temporalibus onerari debet.* a Inſt. 641. *What Charges Tithes and Churchlands are ſubject to.*

That Tithes being Spiritual were not ſubject to temporal Charges at the Common Law.

And upon a doubt of Mr. Juſtice *Telverton*, who was Juſtice of Aſſiſe in the Biſhoprick of *Durham*, as Sir *Nicholas Hyde*, heretofore Chief Juſtice of the Kings Bench, has reported, it was reſolved by all the Judges of *England*, that Tithes are at this day chargeable with all charges impoſed by any Act of Parliament, wherein they are not excepted, as upon the Statute of 43 *Eliz.* to the poor, and to maimed Souldiers, Kings Bench, Marſhalſey, Bridges, &c. But they are not Subject to any Charges Temporal at, or by, the Common Law. P. 5. Car. 1.

But Tithes at this day are Subject to pay firſt fruits or Annates, in Latine *Primitiæ*, *Firſt Fruits.*

mitiæ, which are the first years profits of every spiritual Benefice at a new Incumbents Entry into his Living; they were antiently exacted by the Popes of *Rome*, when they had small revenues to support the publick charge of his place: And *Polydore Virgil* tells us, *Cæterum nullum inventum majores Romano Pontifici cumulavit opes quàm annatum quas vocant usus qui omnino multo antiquior est quam recentiores quidam Scriptores suspicantur: Et Annates more suo appellant primos fructus unius anni Sacerdotii vacantis aut dimidiam eorum partem.*

Polid Virgil. *De Inventione rerum.* l. 1. c. 2. p. 498.

And *Polydore Virgil* tells us, that Pope *Boniface* the Ninth first introduced them, though others ascribe them to *John* the 22*th.*

These were often complained of, as a great oppression upon the Clergy, as *Henricus Hostiensis*, who lived in the time of Pope *Alexander* the Fourth, witnesseth; but however upon the abolishing of the Popes Usurpations here in *England*, the poor Clergy were not acquit of this exaction, but the same was by the Stat. of 26 *H.*8. settled upon the then King and his Successors.

St. 26 H. 8. c. 3.

The first fruits are not here in *England* rated at the full and utmost value of the Living they are to be paid for, but according to valuation taken and made in the said 26 year of King *H.*8. and now used in the first fruits Office. And

And theſe firſt fruits are by a Statute made 1 *Eliz. not to be paid all at once, but one quarter of them is to be paid at the end of ſix months from the time of the Induction, Collation,* &c. *another fourth Part at the end of twelve months, another fourth part at the end of eighteen months, and the laſt quarter part thereof at the end of two years.* 1 El. cap. 4.

And by a Statute made 1 *Eliz.* all Vicarages not exceeding ten pounds, and all Parſonages not exceeding ten Marks according to the valuation in the firſt fruits Office are diſcharged from the payment of firſt fruits. 1 Eliz cap. 4.

And if an Incumbent die, or be legally removed out of his Living without fraud, then after ſuch death or removal, the remaining half yearly payments of the firſt fruits, which were not become due, are diſcharged by the ſaid Statute of 1. *Eliz.*

And by that Statute the Dean and Canons of *Windſor* are diſcharged of the payment of firſt fruits.

And by the Statute made in the 26*th.* year of *H.*8. before mentioned, *It is enacted, That every Archbiſhop, Biſhop, Dean, Prebendary, Archdeacon, Parſon, Vicar,* &c. *before he have any actual or real poſſeſſion, or medling with the profits of his Living (this muſt be between Inſtitution, Collation and Induction) muſt pay or compound* St 26 H. 8. c. 3. *When the firſt Fruits are to be paid.*

pound for, or give ſecurity for the payment of his firſt fruits, in the firſt fruits Office: And that an Obligation taken for the ſame ſhould be of the force of a Statute of the Staple, and that if any ſuch preſume to enter into his Living before ſuch payment or ſecurity given, or compoſition made, he is to forfeit double the value.

But his Majeſty and his Royal Predeceſſors have not been ſevere in this Caſe to take the penalty, but upon faileur their Officers of the Exchequer have ſent out Proceſs to the Sheriff, to put the negligent Parſons, Vicars, &c. in mind of this duty, and upon coming in and paying the charge of the Proceſs, and paying or giving ſecurity for the firſt fruits, they are diſcharged.

But the Parſons, Vicars, &c. muſt be careful to pay in their half yearly payments, as the ſame become due, and take up their bonds, or elſe new Proceſs will iſſue to the increaſe of their charge.

Why Vicarages are charged higher in the firſt fruits Office than Parſonages.

Perhaps ſome may be ſo curious, and deſire to know why Vicarages not exceeding ten pound ſhould be freed of this charge, and Parſonages of ten marks ſhould pay them, now the reaſon of that was, that the Vicarages in time of Popery, and when the Valuation was taken, had a great income by voluntary Offerings, which falling to little or nothing upon the diſſolution of Monaſteries, this favour

vour was afforded them in their first fruits.

The next charge Parsons and Vicars are subject to, are the Tenths, that is a tenth part of the yearly value of all their Church Livings; this payment was first exacted from the Clergy by the Pope about the twentieth year of *E.* 1. and a Valuation was then made by his authority of all Church Livings, at which rate the Pope was answered his Tenths, but he never had any Tenths of such Land as was given to the Church after that time; these payments (as appears by our Histories) the Popes of *Rome* sometimes granted to Kings of *England*, when the Kings pleased him, or rather when he feared their power; but upon the abolishing the Popes power, which was in the 25*th.* year of *H.* 8. these Tenths were given to the King the year following, by the aforesaid Statute of 26. *H.* 8. and to be paid at Christmas yearly, and the Bishop of the Diocess is to collect them, and they are to be paid according to the valuation taken the same year, and now in the first fruits Office, and are not paid that year the first fruits are paid, but are allowed out of them, because 'tis intended that the King has the whole years profit.

Tenths.

2 Inst. 628.

Stat. 25. H. 8. cap.

Stat. 26 H. 8. cap. 3.

But immediately upon the Reformation many Clergy men scrupled, and denyed to pay these Tenths to the King,

being a duty properly due to the Pope, and therefore the refuſal or neglect to pay them to the King, being certified by the Biſhop *that had the Collection of them, is made a Cauſe of Deprivation not only of the Living, for which they refuſed to pay their Tenths, but alſo of all their ſpiritual Preferments.*

St. 26 H. 8. c. 3.

St. 2 & 3 E. 6. c. 20.

But by the Stat. of 2 and 3 E. 6. that ſeverity was moderated, ſo that now the refuſal or neglect to pay them, and ſo certified by the Biſhop makes only that Living void, for which the Tenths ſhall be ſo refuſed. But his Majeſty and his Royal Predeceſſors have rarely put the ſeverity of this Law in Execution, but make out Proceſs in the Exchequer to compel the payment, however ſince the penalty is ſo great, every Clergy man ought to be very careful to avoid the danger.

St. 27 H. 8. c. 8.

The remedy where the Succeſſor pays Tenths due by his Predeceſſor.

There is a Proviſion made by an Act of Parliament in the 27 Year of H. 8. *for thoſe Incumbents that ſhall be forced to pay the Tenths due in the time of their Predeceſſors, that they may levy the ſame upon any Goods they can find of their Predeceſſors upon the Church Living; and if they be not redeemed within twelve days after, they ſhall be diſtrained; that then the ſame ſhall be praiſed by two or three indifferent Perſons to be ſworn, and ſo many of them ſold as will ſatisfy the arrear with coſt; and if no ſuch Goods can be found, then the Succeſſor*

Succeſſor to take his remedy againſt his Predeceſſor, his Executors or Adminiſtrators, or others to whom his Goods ſhall come by bill in Chancery, or an Action of Debt at Common Law.

There is another charge, to which the Parſons, Vicars, *&c.* are ſubject for their Church Livings, which is called Procreations or Proxies, and theſe are duties due and payable to the Biſhops and Arch-Deacons, at the time of their viſitations, which are not paid by any certain Rule, but by ſome antient Taxation, for antiently the Religious Houſes and Clergy-Men at their own charge entertained the Biſhops and Arch-Deacons in their viſitations, but at length their attendants were ſo many, and their trains ſo great, that the Clergy and Religious Houſes were horribly oppreſſed with entertaining of them, to avoid which, the Clergy and Religious Houſes came to this compoſition, every one to pay ſuch a proportion to their viſitors to be freed of that great oppeſſion, and therefore the Canoniſts define them to be, *Exhibitio ſumptuum neceſſariorum facta prælatis qui Dioceſes peragrando Eccleſias ſubjectas viſitant*, and this payment is continued to this day, not only of thoſe Livings which are ſtill enjoyed by the Clergy, but alſo of the impropriations, as I take it.

Procreations.

Sir John Davies Rep. 1, 2, 3.

See more of this matter Lind. cap. *ut ſingula Eccleſiaſtica*, *That by a Canon made by* Steph. Langton *about* 1222 *the Archdeacons were to bring but ſeven horſes in their Trains, and ſtay but one day, and to invite no body.*

Synodals

Synodals. Synodals is another charge upon the Parsons, Vicars, &c. and is likewise paid to the Arch-Deacon, not by any certain rule, but by some antient Taxation; so that some pay more, and some less.

I must confess I cannot find how this payment first became due, but by the name it should seem to be a contribution to the Arch-Deacon's charge in the Synods, they being antiently elected by the Deacons themselves as their representative.

Dugdale's Warw. 126. b. But it should seem, that the Arch-Deacons claim these Synodals for their Easter visitation: and the Bishops have laid some claim to them, but, as my Author conceives, without any just reason, the Arch-Deacon and his Officers performing the Labour, and undergoing the Charge.

All these charges the secular Clergy undergo, which takes away a considerable part of their Revenues.

CHAP.

CHAP. XVI.

The Sixteenth Chapt. ſhews, how far preſcription will prevail in the manner of Tithing, and in what caſes the Parſon, Vicar, &c. ſhall be bound by a modus decimandi.

The force of a modus decimandi in Tithing.

THe Canoniſts and thoſe that are of opinion that Tithes are due *jure divino*, decry all Cuſtoms and Preſcriptions that either diminiſh the tenth part, or acquit the whole: for in truth, no Cuſtom or Preſcription can be good which is poſitively againſt the Law of God. Lindwood cap. *Quoniam propter verbo redemptionem.*

And that is the reaſon why it is frequently ſaid in our Law Books, that the Eccleſiaſtical Courts will not allow a *modus decimandi.* Co. ſelect caſes. 46.

Common Law and Canon differ Concerning Cuſtoms, &c.

But the Common Lawyers allow Tithes to be due, *Jure Divino ſecundum quid* that is, *quoad ſuſtentationem cleri*, but not *quoad decimam aut aliquam aliam certam partem*, and therefore they allow of a manner of Tithing which diminiſheth the *quantum*, or a Cuſtom of not Tithing for this or that particular thing, ſo there be a ſufficient maintainance for the Clergy beſides: and of the ſame opinion are ſome of the moſt eminent School Men, and in this, Tho Aq. Sum. 2, 2z.

Tho. Aq. Sum. 2. 2æ. q. 87. a. 1. o. this, as in all other things where the Common Law, and Canon, or Eccleſiaſtical Laws differ, the Common Law is to be preferred.

The difference between Cuſtom and Preſcription. The difference between Cuſtom and Preſcription I have ſhewed before in the thirteenth Chapter.

The Common Law vindicated. But before I proceed upon this Subject I muſt beg leave of the Reader to ſay ſomething more in vindication of the Common Law, which in this point I conceive does not differ materially from the Eccleſiaſtical and civil Law, for if I do not very much miſtake the Canoniſts and Civilians, they do at this day allow of real compoſitions in diſcharge of Tithes, that is, where the Parſon, Patron and Ordinary do by deed agree to accept of a certain ſum of Money yearly, or ſo much Land, or other profit, though not to the full yearly value, in diſcharge of the Tithes growing and ariſing upon ſuch Lands as they agree for, now what is this but a *modus decimandi*, and a preſcription to maintain this *modus* is no more than a ſupply to prove a real compoſition which was made beyond all memory and loſt, and it were againſt all Juſtice and reaſon that if a Man ſhould be plundred of, or loſe his Deeds, that he ſhould thereby loſe his Eſtate. And it muſt neceſſarily be intended, that every *modus decimandi* that has continued time out of mind muſt have

Lindwood c. *Quoniam propter verb. Redemptionem.*

Seld. hiſt. Decim. 408.

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a reaſonable and legal commencement, and muſt be intended, that it began by a real compoſition.

A Rent charge cannot be created but by Deed, and yet it may be claimed by preſcription ſuppoſing a Deed preceded, the like Law is of all Canons, &c.

And St. *German* in the Doctor and Student puts this caſe, that if it were ordained for a Law, that all payment of Tithes from thenceforth ſhould ceaſe, and that every Curate ſhould have a certain Portion of Land aſſigned to him, or a Rent or Annuity which ſhould be ſufficient for his maintainance and thoſe that ſerved under him, or that every Houſeholder ſhould give a certain ſum to that uſe, that this were a good Law, and grounded his opinion upon this ſaying of Doctor *Gerſon* a great Doctor in Divinity, *Solutio decimarum ſacerdotibus eſt de Jure Divino quatenus inde ſuſtententur ſed quoad tam hanc vel illam aſſignare, aut alios in alios redditus commutare poſitivi juris exiſtit.* Lib. 2. cap. 55. f. 67. a.

And this commuting Tithes into annual Salaries is frequently practiſed in the Proteſtant Churches beyond Sea, as I have been informed.

And theſe preſcriptions *de modo decimandi*, are not only allowed by the antient Common Laws of this Realm, but confirmed *Preſcriptions are confirmed by Parliament.*

firmed by Act of Parliament.

Stat. 2. E. 6. cap. 13.

For by the Stat. of 2 E. 6. *it is enacted, that no Perſon ſhall be ſued or otherwiſe compelled to yield, give or pay any manner of Tithes, for any Manners, Lands, Tenements, &c. which by the Laws and Statutes of this Realm, or by any Priviledg or Preſcription are not chargeable with the payment of any ſuch Tithes, or that be diſcharged by any compoſition real, and having ſaid thus much in vindication of the Common Law, I ſhall proceed to ſhew what Preſcriptions and Cuſtoms, de modo decimandi vel de non decimando are good and allowed at Common Law.*

who may not preſcribe in non decimando. Seld. Hiſt. decim. 409. Rolls 1. 653. H.

First, no Lay-Man can preſcribe in *non decimando* that is, to be diſcharged abſolutely of the payment of Tithes, and to pay nothing in lieu thereof, unleſs he begin his preſcription, in a Religious or Eccleſiaſtical Perſon, and derive a Title to it by Act of Parliament.

who may preſcribe in non decimando.

But all Spiritual and Religious Perſons, as Biſhops, Abbots, Priors, Deans, Prebends, Parſons, Vicars, *&c.* may preſcribe *in non decimando*, and their Farmers may make uſe of ſuch preſcriptions to free themſelves from the payment of Tithes.

Rols 1. 653. H. 3.

And hence it is, that the Parſon or Vicar of one Pariſh, that hath part of his Glebe lying in another Pariſh, may preſcribe *in non decimando* for it, that is, as hath

hath been ſaid, to be free from the payment of any manner of Tithe for it.

But Church Wardens who have Land belonging to their Churches cannot preſcribe *in non decimando* becauſe they are neither Religious nor Spiritual Perſons. Rolls 1. 653. H. 6. *Church Wardens not.*

It hath been held that a Biſhop may preſcribe that he and his Tenants for Life, Years, and Will, and his Copyholders have been free from the payment of Tithes, the reaſon alledged is, becauſe it might commence by a real compoſition for the whole Mannor, and in all caſes where a Spiritual Perſon preſcribes *in non decimando* his Tenants and Farmers ſhall take the benefit thereof. Rolls 1.653. H. 7. *A Clergy Man may preſcribe for himſelf and Tenants.* Rolls 1. 653. H. 4. Co. 2. 45 a.

But if any of the Abbots, Priors, &c. that came to the Crown by the Statute of 27 *H.* 8. were diſcharged of the payment of Tithes by preſcription *de non decimando*, yet the Patentees of theſe Lands ſhall not have the benefit of ſuch preſcriptions, but ſhall pay Tithes. Stat. 27. H. 8. cap. Rolls 1. 654. l. 1. contra. Hob. 309.

Neither can the Kings Patentee be freed from the payment of Tithes of thoſe Lands which the King whilſt he had them in his own hands preſcribed to be freed from the payment of Tithes, becauſe it is a Perſonal diſcharge in the King, for the queſtion ariſing upon Lands diſafforeſted, there might be ſeveral reaſons why Rolls 1. 655. l. 2. *Patentee del Rey.*

he

he paid no Tithes, first, because the grounds were depastured with Beasts *feræ naturæ* for which no Tithes were due, or for that the King was not bound by the decretal Epistle of Pope *Innocent* the third, who setled the Parochial right of Tithes, or by reason the King being a mixt Person might prescribe *in non decimando.*

Cro. Car. *Dubitatur, Ideo quære.*

But the King's Patentees of those Abby Lands that came to the Crown by the Statute of 31. *H.* 8. may take advantage of a prescription *de non decimando* in the Abbot, Prior, or other Religious Person by the force of that Statute, and the enjoyment of the Lands since the dissolution freed from the payment of Tithes during memory is a good proof *à posteriore*, that the Abbots, Priors, &c. held the same discharged from the payment of Tithes.

A Country may prescribe in non decimando.
Lib. Inst. tit. prohibit. Co. 2. 44 b. Doct. & St. l. 2. c. 55. f. 166, 167. b. 174. b. Roll 1. 653. H. 10, 11, 12, 13.

The inhabitants of a County, Hundred, or Country, as the wilds of *Kent* and *Sussex* may prescribe not to pay Tithes of Wood, Milk, or any other particular thing, so there be a competent Livelyhood for the Clergy besides.

Who may prescribe de modo decimandi Co. 2. 44. a. b. Cro. El. 599. 758. 784.

But every Lay Man may prescribe, *de modo decimandi*, That is, that such a Man being Lord of such a Mannor, and all those whose Estate he hath in the said Mannor, have from the time whereof the memory of Man is not to the contrary, have had and enjoyed to his and their own

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uſes all the Tithes ariſing, *&c.* within the ſaid Mannor, paying ſo much yearly to the Parſon of *D.* Co. 2. 44. a. b. Cro. El. 599. 758. 784.

And a Lord of a Mannor may preſcribe for himſelf, and his Copyholders, for they are part of the Demeſns of the Mannor or the Copyholder may preſcribe in the name of his Lord. Cro. El. 784. Noy. 132.

If a *modus decimandi* be to pay two things, as two ſhillings for a Park, and a ſhoulder of every Buck kil'd in the Park, and all the Deer die or are kil'd up, yet notwithſtanding the Preſcription holds good for the two ſhillings. Hob. 43. *A modus to pay two things and one fails.*

But every Preſcription and *modus* muſt have a Continuance, for it cannot be good at one time, and aſleep at another, neither can a wilful denial deſtroy a *modus decimandi*: And it is taken for a Rule in Dr. *Leyfield* and *Tiſdale*'s Caſe, that where no Tithes are regularly and legally due, as for a houſe, *&c.* there can be no *modus decimandi* alledged. Hob. 43. *Preſcriptions muſt not ſleep.* Hob. 11. *Modus for houſes.*

And yet it hath been held, that a Tithe by preſcription may be paid for a houſe, becauſe it might be due for the land before the houſe was built. *Ideo quære.* Co. 11. 162. Hob. 11. Quære. Roll 1. 640. b. 5.

A *modus* to pay Tithes without the view of the Parſon is not good, becauſe it conduces to fraud, and is now againſt an Act of Parliament. Hob. 107. Roll 1. 651. d. 16, 17, 18, 19. Cro El. 446.

So a *modus* that you have paid your Tithe of your Cows, you have been freed Co. *Select Caſes* 45. More 454.

ed of the Tithes of Oxen, Steers, Heyfers, &c. is not good, That is, to pay your Tithes in kind of one thing, thereby to free another Tithe.

Cumberland per Roll. P. 13. Jac. B.R. *What Preſcriptions* de modo decimandi. 2 Leo 70. *are good.*

And it hath been held a void preſcription to pay a Load of Hay yearly in diſcharge of all his Tithe Hay, that is to pay a part in diſcharge of the whole.

So for a Pariſhioner to preſcribe that he, &c. has time out of mind repaired the Church, and by reaſon thereof hath been diſcharged of the payment of Tithes, is no good Preſcription, for the Parſon not being bound to repair the Church has no recompence, but if it had been, that he had repaired the Chauncel, and in conſideration thereof had been freed of the payment of Tithes, that had been a good *modus, ratio patet.*

Roll 1.649. d.8,9.

Wool and Lamb.

Roll 1.648 c. 1.649 d. 7.

It hath been held a good Preſcription, that the Pariſhioner hath time out of mind paid the Tithe Wool of all the Sheep he has ſhorn, though never ſo lately bought in, and in conſideration thereof hath been freed of the payment of the Tithes of thoſe he has ſold before Sheerday.

Roll 1.648. c.4.

It hath been held a good Preſcription, to have paid the Tenth Fleece or Pound of Wool, ſo there were any allowance for the odd Fleeces or odd weight.

Roll 1,649 d. 5.

It hath been adjudged a good *modus*, that in conſideration the Pariſhioner hath ſhorn

ſhorn and wound the Wool to be free of paying Tithes of the neckings and birlings without fraud.

It is a good preſcription, that the Pariſhioner hath time out of mind paid a half penny for every Lamb ſold before *Mayday*, but if the Pariſhioner ſell his Lambs fraudulently a few days before *Mayday* on purpoſe to defraud the Parſon, &c. it is no good diſcharge. Roll 1. 652. l. 1.

A Preſcription to pay wool in kind, if kept till Clipping day, but if ſold before, to pay a half penny a fleece, as Mr. *Marſh* reports, was held no good Preſcription, *tamen quære.* Marſh 79.

It hath been held a good *modus*, that in conſideration that the Pariſhioner hath mowed, reaped and ſhockt the Corn, and paid his Tithe in the ſhock, that he hath been freed of the payment of any Tithes of the Rakings, but as Sir *Edward Coke* ſays, there needs no *modus* as to Rakings without fraud. *For Corn.* More 454.

To preſcribe to have paid the Tenth ſheaf or ſhock, as it falls out is no good Preſcription to free the Pariſhioner of any other Tithe, it being no more than is due. Roll 1. 648. l. 6.

A *modus* that in conſideration, that the Pariſhioner hath ſowed, reapt, bound and ſet up the Corn one year to be free from the payment of herbage the next year of the ſame Land was held good, *tamen quære inde.* Roll 1. 649. l. 4.

Roll 1. 650. d. 11. But it is no good conſideration, that in conſideration the Pariſhioner has plowed, ſowed, mowed, cockt and ſet out the Tithes of part, that therefore he ſhould be freed of paying Tithes of a ſmall parcel left ſtanding.

Wood.

Roll 1. 648. H. 7. A man may preſcribe to pay the Tenth Acre or Rood of wood ſtanding, and the Parſon to cut it himſelf as is uſed in ſome parts of *Lincolnſhire*.

Calves and milk.

Roll 1. 651. d. 19. Cro. El. 869. 786. It hath been held a good *modus* to pay one Calf at ſeven, and if under a half penny a piece, and if he ſell any Calf to pay the tenth part of the price, and it hath been held a good *modus* to pay Tithe Cheeſe from *Mayday* till *Michaelmas* to be diſcharged of the whole Tithe of the Cows, and no Tithe is due for Cheeſe but by Cuſtom, and the labour of milking and making into Cheeſe is added, whereas nothing but the Tithe of milk is due by Law.

Roll 1. 651. d. [illegible] But it is no good *modus* to pay for every milch Cow 2 *d.* and for every Calf 1 *d.* in diſcharge of the Tithes of all other Cattle, but it is a good *modus* for the Calves and milk only, ſo a *modus* to pay a Tithe-Calf in ſatisfaction of the Tithe of all manner of Cattle is not good.

Roll 1. 651. d. 18.

Eggs.

Roll 1. 648. c. 3. A *modus* to pay thirty Eggs in Lent in ſatisfaction of all the Tithe of Eggs has been held a good *modus*.

It

It is a good *modus* that the Parſon time out of mind hath had ſo much, or ſuch a parcel of meadow or Land in ſatisfaction and diſcharge of all the Tithes of Hay, *&c.* ariſing upon ſuch Land. *Land in lieu of Tithes.* Roll 1.649. d.6. Cro.El.587. 8 E.4. 14. a.

It is no good *modus* to be free from the payment of Tithe Hay, ariſing upon Hades, Balks, Greenſlips, or Doals eaten by Beaſts of the Plow, in regard the Pariſhioner hath ſow'd, mown, reapt, ſhockt and prepared the Corn, *&c.* but the contrary hath been held, *ideo quære.* *Headlands, Balks, &c. and Hay.* Roll 650. d. 10. Noy contra 15.

But in conſideration, that the Pariſhioner hath made the Graſs growing in ſuch a Cloſe, and then paid the Tithe of it, he hath been free of the payment of the Tithes of the balks and hades, has been held good. Hetley 147.

It is not a good *modus*, that the Pariſhioner having ſpent all his Hay upon the Beaſts of the plow, that therefore he ſhould be free from payment of Tithe Hay. Roll 1. 650. d. 3.

But a *modus* that in conſideration the Pariſhioner hath cut, dryed and ſhockt the Corn, he hath been freed from the payment of Tithe Hay, has been held a good Preſcription. Roll 650. d. 13.

A *modus* That the Pariſhioner hath time out of mind got Ruſhes and ſtrewed the Church, and in conſideration thereof hath been diſcharged of the payment of Tithe Hay, has been adjudged no good Noy 31. Cro. El. 276.

modus, but if it had been to strew the Parsons Seat, or to deliver straw to the Parson to strew the Church had been a good *modus*.

Roll 1. 647. b. 1, 2, 3, 4. 648. d. 1, 2. 649. d. 3. Hetley 133. Hob. 250. More 910. Cro. El. 660.

And it hath been held a good *modus*, that in consideration the Parishioner has made the Hay into Grass Cock, that therefore he hath been discharged of the Tithe of the aftermath; but Sir *Edward Coke* declares for Law, that there needs no *modus* to be alledged, but that aftermath is of it self freed from the payment of Tithes, and so I take it the Law is held at this day.

2 Inst. 652.

Bees.

Roll 1. 651. d. 15.

A *modus* to pay the tenth part of all the honey and wax of Bees killed, has been held a good *modus* for the Tithe of Bees.

But there have been some opinions, that there is no Tithe due by the Law for Bees, because they are *feræ naturæ*. But nevertheless by Custom they may be Tithable, and so they are in most places.

Herbage.

Bulst. 2. Price verf. Mascal. More 909.

A Custom or Prescription to pay no Tithe for the Herbage of Beasts bred up for the Plow and Payl hath been allowed to be a good Custom, but of this see more before in the fifth Chapter.

Guest Horses.

Roll 1. 650. d. 14.

It is no good *modus* that the Owner of the Land has paid all his Tithe for his Cattel there depastured, therefore to be free of the Tithe Herbage for guest Horses.

It

It hath been held that no Tithes ſhall be paid for the fewel ſpent in the dwelling Houſes in the ſame Pariſh it grew, without alledging any *modus* at all. *Fewel.* More 909.

But it ſhould ſeem that in this laſt Caſe there needs no *modus* at all to be alledged, but that for the fewel ſpent in the Owners Houſe in the ſame Pariſh, there is no Tithe due of Common right. *Ideo quære.* Cro. Car. 113. Norton verſ. Farmer T 4. Car. 1. C. B.

If a man preſcribe to pay ſix ſhillings and eight pence, for all the Tithes ariſing and happening in ſuch a Park, and the Park is diſparkt and turned to tillage, the Preſcription is gone. *Parks.* Roll 1. 651. E. 1. and 4. Maſcal verſ. Price. P. 13. Jac. B. R. Heb. 39. Hutton 58.

But if in this Caſe he had made his Preſcription, that in conſideration of ſix ſhillings and eight pence yearly paid to the Parſon, *&c.* he had been freed of all the Tithes ariſing upon ſix hundred Acres of Land called a D. Park, this had been a good Preſcription, and ſhould have freed the Park.

So if the Preſcription of a Park have been to pay ſix ſhillings and eight pence, and a ſhoulder of every Buck kill'd in the Park, in diſcharge of all Tithes ariſing within the ſame in this caſe, though the Park be diſparked, and no Deer left, yet the *modus* remains, and ſhall diſcharge the whole Tithes. Roll 1. 652. E. 5. Booth's verſ. Reynells. m. 20. Jac. B. R. m. 10. Jac. ro. 641. B. R.

And it has been held a good *modus* to give a Buck and a Doe yearly to the Rector, *&c.* Hutton 57. Noy 146.

&c. in discharge of all the Tithes arising within the Park, although they be *feræ naturæ*.

Modus for Land. Hutton 58.

If a Parson, &c. have had an Acre or piece of Meadow ground, time out of mind, in discharge of all the Tithe Hay arising upon such a Farm, this shall only discharge the Hay upon the antient Meadowing, and not the Hay of Ground converted from Pasture or Tillage to Meadowing.

Roll 1. 651. E. 1. 2 Inst. 490.

But if one have a *modus* for all the demesn of his Mannor, and erect a new Mill this shall be comprehended within the *modus* and shall not pay any Tithe.

Roll 1. 651. E. 2.

But if a Man have a *modus* for all the Hay and Grass upon twenty Acres of Land, and converts the same to Tillage, or into a Hop Yard, he shall pay Tithes thereof: So it appears a great difference where the *modus* goes to all manner of Tithes in general, and where to particular Tithes.

Where a modus to the Vicar shall discharge against the Parson, and è converso. More 907. Cokes *Select Cases* 45. 1. Cro. El. 137. Hutton 57 m. 10. Jac. r. 641.

Where a *modus* is alledged to pay a certain Summ to the Vicar in discharge of any Tithes due the Parson, this being a dispute of the right between two Clergy Men ought to be determined in the Ecclesiastical Court, but it seems to be a good *modus* as to the Parishioner, and so it was held in the case of *Pool* and *Reynels* in the Kings Bench. *Mich.* 10. *Jac.* But Mr. *Ware* reports a case to be adjudged *H.* 18. *Jac.*

Modus to pay a rate to the Vicar for Tithes due to the Parson.

Jac. B. R. that it was no good *modus*, and that *Henden* vouched one *Bankes* Caſe to be adjudged accordingly. *Ideo quære.* But it ſeems to me a good *modus*, for this being Originally a *modus* between the Parſon and Pariſhioner, the Vicar might be indowed with the *modus*; but this muſt be intended alſo where the indowment is time out of mind, and not to be produced, or where the Vicar hath it ſpecially in his indowment.

But to pay a rate to the Pariſh Clerk is no good diſcharge of Tithes againſt the Parſon or Vicar, unleſs the Parſon be bound by Cuſtom to find the Pariſh Clerk, nor is a *modus* to the Parſon a good diſcharge againſt the Vicar.

Leonard 1. 94. Croke El. 71. Bulſt. 1. 220. Wintel verſ. Child m. 14. Jac. B. R.

And ſo having ſhewed what Preſcriptions *de modo decimandi*, and *de non decimando* are good and allowable at the Common Law, in the next place I ſhall ſhew how a *modus decimandi* or Preſcription may be deſtroyed or loſt.

CHAP.

CHAP. XVII.

The Seventeenth Chapter shews how a modus decimandi *or Prescription may be lost or destroyed.*

Roll 1.652. f. 2. *What matter will destroy a* Modus.

IF a Man have a *modus* for a Mill which is removed of necessity to a new place because the water *invito* has changed its course, here though the Mill be removed the *modus* remains.

But if the Owner of such a Mill shall of his own accord, and without any cause of necessity remove his Mill to a new place, in this case he shall lose his *modus.*

Roll 1.652, f. 2.

If a Man have a *modus decimandi* for two Messuages and two Mills to pay twenty shillings *per annum*, and he erects a new Mill in one of the Messuages the *modus* shall not extend to free the new Mill.

Stepney vers. Warren P. 41. El. B. R.

There have been Opinions that Unity of Possession, that is, to have fee-simple in the Rectory, and likewise in the Land to which the *modus* is annexed, should destroy a Prescription or *modus decimandi.*

But

But if a Man have four Water Corn Mills for which he hath time out of mind paid a *modus* of four ſhillings *per annum*, and pulls down one of them, yet the *modus* remains, and he ſhall ſtill pay the four ſhillings. Sir *John Hob's* Caſe. T. 9. Jac. B. R.

CHAP. XVIII.

The Eighteenth Chapter ſhews, by what Conveyances, and by what names, Tithes may be granted, conveyed, demiſed, &c. and what Demiſes Parſons and Vicars may make of their Glebe and Tithes.

REgularly Tithes at this day cannot be granted or demiſed but by Deed in Writing under Hand and Seal, or by matter of a higher nature, as Fines, Recoveries, &c. But in ſuch caſes as they are become Lay-fee they may be deviſed by will in writing as Lands may, but they cannot be granted by Copy of Court Roll, becauſe they cannot be parcel of a Mannor. Stiles 261. *By what Conveyances Tithes will paſs.* Hungerford verſ. Haml. T. 36. El. ro. 506. per Owen. Cro. El. 814.

But

Brettyman verſ. Woodward. P. 31. Eliz. ro. 17. B. R. B. Noy. 89. Hetley 3. Hughes 373. Bellamy verſ. Bapthorp in 2 Car. ro. 179. B. R. Co. 4. 35 a.

But Tithes cannot be conveyed or demiſed by any paroll agreement, unleſs it be to the Owner of the Land for one year by way of retainer.

Tithes impropriate are at this day by the ſeveral Statutes of diſſolution become Lay-fee, and will paſs by the name of Hereditaments, but by the grant of a portion of Tithes, the Tithes belonging to a Rectory will not paſs.

St. 32 H. 8. cap. 7.

Tithes impropriate may be paſt from one to another by Deeds of Bargain and Sale, irrolled according to the Statute of 27 *H.* 8. they may be transferred in uſe upon good conſideration by Deeds of Covenant to ſtand ſeized, or by Fines or common Recoveries, and may be ſued for by Writs of Aſſiſe of novel diſſeiſine, Writs of Entry, Writs of Right or other real Actions, or by *ejectione firmæ*.

But upon a Leaſe for Lives of Tithes, no Rent can be reſerved to be recovered at, or by the Common Law, for no Action of debt will lie, or diſtreſs can be taken, *& ubi non eſt remedium, ibi non eſt jus.*

But upon a demiſe of Tithes for Years, a Rent may be reſerved, becauſe an Action of debt will lye upon ſuch Leaſe upon the Contract.

CHAP.

CHAP. XIX.

The Nineteenth Chapter ſhews, what barren Lands are free from the payment of Tithes within the Statute of 2 E. 6. cap. 13.

IN the Statute of 2 E. 6. there is a *Proviſo* to this effect. 2 E. 6. cap. 13.

That all ſuch barren Heath or waſt Ground, other than ſuch as be diſcharged from the payment of Tithes by Act of Parliament, which before this time have lain barren and paid no Tithes by reaſon of the ſame barrenneſs, and now be, or hereafter ſhall be improved and converted into arable ground or meadow, ſhall from henceforth after the end and term of ſeven years next after ſuch Improvement fully ended and determined, pay Tithe of Corn and Hay growing upon the ſame, any thing in this Act to the contrary in any wiſe notwithſtanding.

This Clauſe was added for the Incouragement of Tillage and Improvement of lands by water or otherwiſe, and therefore though here be no words of diſcharge of the payment of Tithes, during the firſt ſeven years, yet by a reaſonable intend-

2 Inſt. 656. Dyer 170. b. P. 5. Plow. 204. a. 396. b.

intendment, the ſame ſhall be diſcharged from the payment of Corn and Hay, for the firſt ſeven years after the Improvement, and that is proved by the ſubſequent Clauſe, whereby it is provided.

That if any ſuch barren waſte or heath ground hath before this time been charged with the payment of any Tithes, and that the ſame be hereafter improved and converted into arable or Meadow, that then the owner or owners thereof ſhall during the ſeven years next following from and after the ſame Improvement pay ſuch kind of Tithe as was paid for the ſame before the ſaid Improvement, any thing in this Act &c.

So that it appears plainly by this *Proviſo*, that it was the intent of the makers of this Law only to free theſe improved Lands from the payment of ſuch Tithes as were produced by the improvement which muſt be Hay or Corn and no other.

Next, ſuppoſe a Man have barren Lands within this Law which are free from the payment of Tithes by preſcription, real compoſition, &c. It ſhould ſeem by the penning of the aforeſaid *Proviſo*, that he ſhould pay Tithes for the ſame after the ſeven years, this *Proviſo* only providing for ſuch Lands as are freed by Act of Parliament.

But

But that doubt ſeems cleared by the next precedent *Proviſo* in this very Act, whereby it is provided.

That no Perſon ſhall be ſued or otherwiſe compelled to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledg or Preſcription are not chargeable with the payment of any ſuch Tithes, or that be diſcharged by any compoſition real.

So that this *Proviſo* preſerves all former legal diſcharges.

But the great queſtion upon this Law is, what ſhall be ſaid to be barren Heath or waſt Ground within this Law: And Sir *Edward Coke* defines barren Land in theſe words,

Terra ſterilis eſt terra infœcunda nullum ferens fructum. But that definition will not hold in this Caſe, for it does appear by the ſecond *Proviſo* that ſuch barren Lands are intended that are barren *quoad Agriculturam*, that is, ſuch barren Heath or waſt Ground that of its own nature, without improvement by Lime, Marle, Manure, *&c.* will not bring forth Corn or Hay.

2 Inſt. 655.

Dyer 170. p. 5. Co. Ent. 462. 463.

But if Ground be not fit for Tillage, yet if it be not *ſuapte natura* barren, it is not within this Law. As if a Wood be ſtubbed and grub'd up, and made fit for the

6 E. 6. per Bendloes. 2 Inſt. 656. Hill. 9. Jac. C. B. *ex motione* Houghton.

the Plow, and reduced to Tillage, it ſhall pay Tithes preſently for Wood; Ground is *Terra fertilis & Facunda.*

2 Inſt. 656.
More 969.

So if Mariſh, Meadow or other Land by neglecting to ſcowr the Trenches or Sewers, or by ſudden inundation be drowned, or if by ill husbandry or negligence fertile Land be over-run with goſs, whynns, broom, fern, buſhes, briars, *&c.* yet they ſhall not have the benefit of this *Proviſo*, becauſe of their own natures they are fertile and apt for Tillage, and the Parſon, Vicar, *&c.* ſhall not loſe his Tithe by the ill husbandry of the Pariſhioner.

If Lands were barren, Heath or waſt Ground at the time of the making of this, and were improved, and had, or might have had the benefit of this Law, and after return to their barrenneſs, the Owner

Co. 10. 86. b.
Co. 6. 18. a.

of ſuch Lands ſhall not have the benefit of this Law a ſecond time upon a ſecond improvement: but I take the Law to be otherwiſe, if the Lands had been improved before the time of the making of this Law, and were then become barren again, for there I take it, upon a new improvement the Owner of ſuch Land ſhall have the benefit of this Law.

More. 430.
Bulſt. 165.
2 Inſt. 656.

Marſh Lands new gained from the Seas, and fenn Lands gained from the freſh waters by draining, banking, *&c.* are not within

within the meaning of this Law to be freed from the payment of Tithes, during the first seven years after the gaining.

But the Determination of this point, which is or which is not barren Land within this Statute? commonly falls out to be determined by common Jurors, which notwithstanding the Direction of the Judge are seldom so favourable to the Church as they ought.

This *Proviso* only charges the payment of Corn and Hay after the seven years, and the second *Proviso* provides only for the payment of such like Tithes as were formerly paid before the improvement, for the first seven years after the improvement, and makes no provision for the payment of other Tithes, save Corn and Hay, after the seven years: So that it may seem to imply a discharge of all Tithes, but Corn and Hay after the seven years; but to this I answer, that there being several Laws both Statute and Canon made formerly for the due payment of Tithes, and no negative words in this act, it shall not abrogate those Laws to the prejudice of the Church by implication.

27 H. 8. c. 20. 32 H. 8. c. 7. *confirmed by the* St. of 2 E. 6. *Canons provincial.* cap. *Quia quid male dictionis.* cap. *Errores damnabiles.* cap. *Quoniam propter.* cap. *Quoniam ut audivimus*, &c.

CHAP. XX.

The Twentieth Chapter ſhews, what a real Compoſition is, and in what Caſes Lands ſhall be freed of the payment of Tithes by ſuch Compoſition real.

Where Tithes ſhall be diſcharged by a real Compoſition, and what it is.

THat which we call a real Compoſition is, where the preſent Incumbent of any Church, together with his Patron and Ordinary do agree by Deed under their hands and ſeals, or by fine in the Kings Court, that ſuch Lands ſhall be freed and diſcharged of the payment of all manner of Tithes for ever, paying ſome annual payment, or doing ſome other thing to the eaſe, profit or advantage of the Parſon or Vicar, &c. to whom the Tithes did belong: And theſe real Compoſitions have ever been held and allowed here in *England* to be a good Diſcharge of the payment of Tithes: And from theſe real Compoſitions it is intended, all Preſcriptions *de modo decimandi* firſt took their riſe and beginning, though I doubt moſt at this day have grown up from the negligence and careleſneſs of the Clergy themſelves.

Co. 4. 44. a. 2 Inſt. 655. Doct. & Stud. l. 2. cap. 55. fol. ult.

And

And ſuch Compoſitions may be made by the Pariſhioner alone without the Patron and Ordinary, but it then binds only for the Life of the Incumbent, and will be avoided by his Reſignation, Deprivation, or being abſent eighty days in a year from his Cure, if he have Cure of Souls. Vide Lindw. cap. *Quoniam propter verbo Redemptionem* Upon this matter.

But it ſeems ſome of the Canoniſts and Civilians are of opinion, that all Compoſitions between the Lay and Clergy to be diſcharged wholely of payment of Tithes, or to pay leſs in recompence than the full value are invalid, but otherwiſe between Clergy-men, but by the common Law which muſt govern here, there is no ſuch difference allowed, but all real Compoſitions made as aforeſaid are good and valid.

But note, that no Compoſition made by parol or word of mouth only, and not reduced into writing under hand and ſeal, is binding at all, unleſs it be upon Record as by Fine, *&c.* Hob. 176.

But I conceive at this day no real Compoſition can be made to bind the Succeſſor of the Parſon or Vicar that makes the ſame, for they are now reſtrained by the *Stat. of* 13 El. *to make any Grants other than for twenty one years, or for three Lives with the other qualifications mentioned in the ſaid Act.* 13 El. cap. 10.

So that it seems clear to me, that Parsons and Vicars at this day, notwithstanding the confirmation of the Patron and Ordinary, cannot charge their Benefices or any thing belonging to them, other than for twenty one years, or three Lives as aforesaid, and that only by Leases confirmed by Patron and Ordinary of things usually demised; whereupon the accustomed yearly Rent or more is reserved.

So that what has been said concerning real Compositions is only to be intended of such as were made before that and other later Statutes, for I take it a real Composition at this day will only bind the Parson himself, whilst he is Parson Resident, and serving the Cure, *quod nota.*

CHAP.

CHAP. XXI.

The One and Twentieth Chapter ſhews, what Monaſtery Lands are, or may be, free from the Payment of Tithes.

IT is without Diſpute, that none of the Abby Priory Lands, that came to the Crown by the Statute of 27 *H.*8. or before, are freed or diſcharged of the payment of Tithes by the Statute of 31 *H.*8. c.8. or by any other Law or Act of Parliament. Jones 373. 188. Stat. 27 H.8. cap. 28. *What Monaſtery Lands ſhall be freed from payment of Tithes.*

But in the Statute of 27 *H.*8. there was a *Proviſo*, that notwithſtanding that Act the King might by his Letters Patents under the great Seal of *England* continue any of the ſaid Monaſteries, and that *Proviſo* is left out of all the modern Prints, only *Raſtal* in his abridging of that Statute makes ſome mention of it.

Now the Reader muſt obſerve once for all, that all Monaſteries under two hundred pounds *per annum* were to have been diſſolved by the Statute of 27 *H.*8. and are therefore uſually called the ſmaller Abbeys, and thoſe of two hundred pounds a year and upwards were not diſſolved till the 31 year of *H.*8. and are

commonly called the great Abbeys.

And upon theſe two Statutes this Caſe lately happened in the Exchequer Chamber between *Walklate* Farmer of the Rectory of *Uttoxater* in the County of *Staff.* to the Dean of *Windſor*, and *Wilſhaw* Owner of a Farm in that Pariſh, that was parcel of the poſſeſſions of the Abbey of *Croxden* in the ſame County, which was one of the ſmall Abbeys, and of the *Ciſtertian* Order, which was freed of the payment of Tithes, as ſhall be ſhewed hereafter, and this Abbey was diſcovered by the Defendant *Wilſhaw* to be continued by Letters Patents under the great Seal of *England*, and ſo not diſſolved till the Statute of 31 *H.*8. whereupon the Defendant was diſmiſſed, and diſcharged of payment of Tithes by the Stat. of 31 *H.* I mention this Caſe at large for the ſingularity not for any nicety in the Learning of it.

31 H.8. c. 13.

31 H.8. c.8.

By the Statute of 31 *H.*8. before mentioned, there is a Clauſe to this effect.

The Clauſe of 31 H. 8. that frees Abbey Lands

That the King and his Patentees, which then had, or then after ſhould have, any Monaſteries, Abbathies, Priories, Nunneries, Colledges, Hoſpitals, Houſes of Fryars, &c. or any Mannors, Lands, &c. which did belong to them, ſhould have, hold, retain, keep and enjoy the ſaid Mannors, &c. according to their Eſtates and Titles diſcharged and acquitted of the payment of Tithes as freely

freely, and in as large and ample manner as the ſaid Abbots, &c. or any of them had held, occupied, poſſeſſed, uſed, retained, or enjoyed the ſame, or any part thereof at the days of their diſſolution.

And the Reader is to obſerve, that the Abbots, &c. at the time of their diſſolution held their Lands diſcharged four manner of legal and regular ways, which were allowed by the Laws of this Realm, to wit.

1. By the Bulls of Popes. 2. By real Compoſitions with the Parſon &c. Patron and Ordinary. 3. By Preſcription: And 4. By Order.

But there is another ſort of diſcharge, though not a Legal one, has been allowed in this Caſe to make a 5. ſort of diſcharge, and that is perpetual unity, where the Abbot has had the Rectory of any Church and Lands in the ſame Pariſh time out of mind, which have been held free from the payment of Tithes by all the time of memory, and of theſe ſeveral diſcharges I will ſpeak in order.

And firſt of diſcharges by the Popes Bulls: it is to be underſtood, that when the Pope uſurped a power over the Clergy here in *England*, he did at his pleaſure grant Exemptions to this or that Abbey, or to whom elſe he pleaſed to be freed from the payment of Tithes, which was allowed as a good diſcharge againſt the *Bulls.*

Parſons and Vicars, who in many places ſuffer by theſe Bulls to this day, theſe Bulls being turned into Preſcriptions, &c.

Real Compoſition. The ſecond ſort of diſcharges was by real Compoſitions between the Parſon or Vicar, and the Abbots, Priors, &c. confirmed by the Patron and Ordinary; of theſe we have ſpoken at large before in the twentieth Chapter, and therefore ſhall not repeat it, but paſs to the third ſort of diſcharges.

The third ſort of Diſcharges is by Preſcription, of which we have likewiſe ſpoken at large before in the ſixteenth Chapter, to which I ſhall refer the Reader.

I ſhall only obſerve to the Reader again in this place, That the Abbots, Priors and other religious perſons might preſcribe generally to be free from the payment, or to be diſcharged of the payment of Tithes without any recompence to the Parſon, &c. but a Layman could not preſcribe abſolutely to be free from payment of Tithes, but *ſub modo* that is paying or doing ſomething to, or for, the Parſon, Vicar, &c. in recompence and ſatisfaction of the Tithes as you may at large ſee in the Chapter here before.

And it is to be obſerved, that no Abbot, Prior, &c. could make any ſuch Preſcription by the Common Law, that was not founded before the time of memory, that

is

is before the first year of *R.* 1. which is the time of the limitation of all Prescriptions at the Common Law, which rejects the practice of the Civil Law, which as should seem allows the limitation of a prescription or custom to forty years. 2 Inst. 653.

It may reasonably be demanded, how this manner of discharge can be made out at this day, since there is now no Person living, that can prove how the Abbots held and enjoyed their Lands; to which I answer, that what was done before the dissolution of Abbeys must now be proved by what has been done since; for if Monastery Lands have been held all the time of memory since the dissolution, freed from the payment of Tithes, it shall be intended, that they were so held before, and therefore they have not paid or been questioned since.

The fourth sort of discharge is by order, and this discharge also for the most part depends upon Popes Bulls or grants, who at pleasure granted exemption to what orders they pleased. *Discharge by Order.*

About the Year of our Lord 1150. the most Religious orders then in being were discharged of the payment of Tithes; but about that time Pope *Adrian* the fourth reduced them to *Cistertians*, *Hospitaliers* and *Templers*, and about the Year 1215. Pope *Innocent* the third added the *Præmonstratenses*. But the Priviledges granted 2 Inst 652. Seld. Hist. decim. 120. Seld. de decim. 486.

Dyer 277, 278. granted to these orders extended only to the Lands, these orders held in their own manurance, and not to any which was held by their Tenants or Farmers.

But about the beginning of the Raign of *H.* 4. the *Cistertians* attempted to have enlarged their priviledg to their Tenants and Farmers, which tending to the ruine of many poor Parsons and Vicars that had cure of Souls was complained of in a Parliament held in the second Year of *H.* 4. whereupon it was enacted, that not only the *Cistertians* but all other orders that put any Bulls in execution for the discharging any of their Lands from the payment of Tithes in the Lands of their Tenants and Farmers, shall incur a *Premunire*, that is, forfeit all their Goods and the profits of their Lands during life, and be likewise imprisoned during the offenders life, which gave such a check to that proceeding, that I do not find any thing of that nature after attempted.

The Templers. 2 Inst. 432. The Templers after in the Councel of *Vienna*, which was held in the Year of our Lord 1311. and in the fourth Year of *E.* 2. were condemned for Heresy. And all their possessions by Act of Parliament made in the seventeenth Year of the same King, were transferred to the Hospitaliers or Knights of St. *John* of *Jerusalem* who enjoyed them till the thirty second Year of the Reign of King *H.* 8. at which time

Stat. 17. E. 2. c.

time by Act of Parliament they were set- 32 H. 8. c. 24.
led upon the Crown.

But where it is said in *Kelway* that the Templers were condemned of hereſie in the eight Year E. 2. and their Lands given the ſame year to the Hoſpitaliers, it is a great error; for it is clear that the Council of *Vienna* was held in the fourth year of that King, and chiefly called againſt the Templers; and it is as clear that their Lands were not here in *England* ſetled upon the Hoſpitaliers till the ſeventeenth of the ſame King.

Where the leſſer Abbeys may be freed of Tithes.

And though the Lands of the leſſer Monaſteries be not within the benefit of the Statute of 31 *H.* 8. to be freed of the payment of Tithes, yet they ought to enjoy all ſuch priviledges as are annext to the Land, and therefore ſuch Lands in whoſe hands ſoever they come ſhall be freed of the payment of Tithes, yet they ought to enjoy all ſuch priviledges as are annext to the Land, and therefore ſuch Lands in whoſe hands ſoever they come, ſhall be freed of the payment of Tithes by real compoſitions and preſcriptions *de modo decimandi*, but not by preſcriptions *de non decimando*, unity of poſſeſſion, order or Bulls of Popes, but in all the caſes the Parſons and Vicars have the advantage by the diſſolution of all thoſe Abbies that were diſſolved by the Statute of twenty ſeven *H.* 8. and the Parſons and Vicars

Jones 3.

ſhall

shall in such case be restored to their Tithes again, which in all Justice they ought in all other cases if the Parliament had not seen reason to the contrary.

The lesser Monasteries, that is, which were under 200 *l. per annum* of the orders of *Cistertiani* and *Præmonstratenses* were, as has been said, dissolved by the Statute of 27 *H.* 8. have lost the priviledg of being discharged of the payment of Tithes, unless they were continued as the Abbey of *Croyden* was, but those Monasteries of those orders that came to the Crown by the Statute of 31. *H.* 8. retain the priviledg of those orders in not paying Tithes, but this is to be understood only for such time as the Owners hold them in their own manurance, for if they let them out to Tenants they shall have no more priviledg than the Tenants of those orders of the *Cistertiani* and *Præmonstratenses* had, which was none at all.

Jones 2, 3, &c. Cro. Jac 607. Hob. 68.

Lands of the lesser Abbeys granted to the bigger not freed.

But note, that if the King after the dissolution of the lesser Monasteries (which had been of any of the orders that were discharged of the payment of Tithes) had granted any of their Lands to any of the greater Monasteries which were not dissolved till the Statute of 31 *H.* 8. yet those shall not retain the priviledges the Abbots had at the time of the former dissolution; the right immediately reverting by the dissoluti-

diſſolution to the Parſons and Vicars to whom the Tithes of right did belong, the greater Abbyes could not hold them legally diſcharged at the time of the ſecond diſſolution: So that there is a manifeſt difference between this and the caſe of *Walkelate* and *Wilſhaw* before remembred, for in that caſe the Monaſtery was continued and not diſſolved till the Statute of 31 *H.* 8.

Land purchaſed after the Priviledges granted, not freed.

And it is to be obſerved that no Lands acquired by any of the Monaſteries of thoſe orders which were ſo freed from payment of Tithes after the Councel of *Lateran*, which was in the Year of our Lord 1215. and by conſequence none that were founded after that Councel are diſcharged of the payment of Tithes either in their own, or their Tenants hands, for by that Councel the Priviledg was limited to ſuch Lands as theſe orders had at the time of that Councel.

Seldens hiſt. of Tithes 121.

And although any Abbey Lands of the great Abbeys which were of the *Ciſtertian* and *Premonſtratenſian* orders were in the hands of Tenants for years at the time of the diſſolution, yet the King and his Patentees after the Leaſes determined ſhall hold them diſcharged, whilſt the Patentees and Owners hold them in their own hands, but the Kings Tenants ſhall hold them diſcharged becauſe of the Royal Prerogative of his Perſon not being intended fit for Husbandry. Ha-

Dyer 277. b. p. 60. Cro. Jac. 559.

5 *Perpetual unity.*
Co. 1. 47. b. &c.
Co. 11. 14. b.
Dyer 349. p. 16.
More 528.
Hob. 311. 306. 298. 300.
2 Inst. 655.
More 46, 47.
Cro. Jac. 608.

Having now said thus much of the four legal manner of discharges beforementioned, I shall proceed to that of perpetual unity, which cannot be said to be a legal discharge of the payment of Tithes: Yet because the Abbots, Priors, *&c.* at the time of the dissolution held the Lands discharged of the payment of Tithes, though not legally discharged of Tithes, it hath been resolved by many Judgments and setled, that this is a good discharge within the meaning of the aforesaid clause of 31 *H.* 8. Now that which we call a perpetual unity is, as hath been said, where an Abbot, Prior, *&c.* time out of mind have been seized of the Lands out of which the Tithes arise, and the Rectory within which Parish the Lands lye.

Definition.

And it is to be observed that every perpetual unity that shall discharge the Lands from the payment of Tithes, must have these four qualities.

Co. 11. 44. b.
Hob. 300.

First, it must be *justa*, that is, by good and lawful Titles.

Secondly, It must be perpetual, that is, the Abbey must be founded and indowed with the Land and Rectory before the time of memory, which by the rules of the Common Law, as has been said, must be before the first Year of *R.* 1. for if by any Records, Deeds, or other legal and good evidence it can be made appear that either the Land or Rectory came to the

the Abbey ſince the ſaid firſt Year of *R.* 1. the union is not perpetual, and yet if the appropriation be antient, as in the time of *E.* 4. or before, though the Lands cannot be diſcharged upon the ſcore of perpetual unity, yet they may by preſcription, if in truth the Lands were held diſcharged of the payment of Tithes.

Thirdly, ſuch unity as ſhall diſcharge Lands of the payment of Tithes within this Law muſt be *æqualis*, That is, the Abbots, Priors, *&c.* muſt be ſeized in fee-ſimple as well of the Lands upon which, *&c.* as of the Rectory.

Laſtly, ſuch unity muſt be *libera*, that is, free from the payment of any manner of Tithes; for if their Farmers at will, years, *&c.* have paid any manner of Tithes to the Abbots, Priors, *&c.* or their Farmers of the Rectories, the perpetual unity will not ſerve. And therefore where ſuch perpetual unity is pleaded in diſcharge of Tithes, the adverſe party may reply that the Tenants or Farmers before the diſſolution paid ſome ſort of Tithes, and ſo avoid the perpetual unity. Cro. Jac. 454, & 482.

Having firſt given the Reader ſatisfaction that all the Lands that came to the Crown by the Statute of 27 *H.* 8. and before, can have no benefit of the diſcharge given by the Statute of 31 *H.* 8. and having alſo ſhewed how many ways Lands may be

be discharged from payment of Tithes that came to the Crown by the said Statute of 31 *H.* 8. It rests now that I should say something of those Lands that have since come to the Crown by the Statutes of 32 *H.* 8. *cap.* 24. 37 *H.* 8. *cap.* 4. and 1 *E.* 6. *cap.* 14.

Co. 2. 47. a. *How other Lands stand that came not to the Crown by* 31 H 8.

It is a Rule taken in the Arch-Bishop of *Canterburies* Case, that neither the Letter, nor the meaning of the Statute of 31 *H.* 8. extended to free or discharge any Lands from the payment of Tithes, save those that came to the Crown by that Act; for as that Book says it is absurd that the branch of the Statute of 31 *H.* 8. concerning Tithes, should be extended to a future Act, that the makers of the Statute of 31 *H.* 8. without the Spirit of Prophesy, could not have the prescience of.

More 913. Cro. Jac 57. Hill 2 Jac.

And as to those that came to the Crown by the Statute of 32 *H.* 8. *cap.* 24. It was adjudged in the case of *Spurling* and *Quarles*, that they are not discharged of the payment of Tithes.

Jones 182, &c. Latch 89. Hughes 392. Bridgm. 32.

But there is a later Judgment that seems to oppose these former resolutions, it was between one *Witton* and Sir *Richard Weston*, that was after Lord Treasurer. *Trin.* 4. *Car.* 1. B. R. and the question was, whether those Lands of the Hospitaliers that came to the Crown by the Statute of 3 *H. cap.* 24. were discharged of

of the payment of Tithes by that Statute of 32 *H.* 8. or by the former Statute of 31. and in that case *Dodridg* and *Jones* Justices, held that they were discharged within the Statute of 31 *H.* 8. and they did in effect deny the Books before cited to be Law, the chief Justice *Hide* was of opinion that they were not discharged by the Statute of 31 *H.* 8. but by that of 32. So that by their three opinions the defendant Sir *Richard Weston* had judgment, but *Whitlock* was of opinion that those Lands were not discharged of the payment of Tithes by the one Statute or the other: now upon the whole matter I shall submit to the Judicious Readers Judgment whether this later resolution be of any weight to shake the former resolutions, since in this case though there were three for giving Judgment for the Defendant, yet to the point controverted upon the Statute of 31 *H.* 8. they were two against two, and that they were not discharged by the Statute of 32. there were three against the chief Justice *Hide*. So that I conceive the Law remains according to the former resolutions, that there are no Lands freed from the payment of Tithes by any Statute, but those that came to the Crown by the Statute of 31 *H.* 8.

I must confess I have met with no Judgments upon those Lands which came to the Crown by the Statute of 37 *H.* 8. but

those being the same with those that came to the Crown by the Statute of 1 *E.6. cap.* 14. I conceive neither those that came to the Crown by either of those later Statutes have any priviledg at all, and it is agreed in that very case of *Witton* and *Weston* that those Lands that came to the Crown by 2 *E. 6.* could not have any benefit by the clause of discharge in the Statute of 31 *H.* 8.

Jones 185. Cro. 2. 470. Co. 2. 47. a.

So that I shall conclude that there is no Land can have any priviledg at this day to be discharged of Tithes that belonged to the Abbots, Priors, &c. but such only as came to the Crown by the Statute of 31 *H.* 8. *cap.* 13.

CHAP.

CHAP. XXII.

The Two and Twentieth Chapter shews, what Personal Tithes are, and in what manner they are payable.

THE Canonists define personal Tithes thus:

Decimæ personales sic dictæ quia potius in respectu personæ solvuntur quàm rei, ut puta de artificio, negotiatione & militia. And by the Canon,

Decimæ personales solvantur de artificibus & mercatoribus, scilicet de lucro negotiationis, similiter de carpentariis, fabris, cæmentariis, Textoribus, pandoxatricibus, & omnibus aliis operariis, stipendiariis, ut videlicet dent decimas de stipendiis suis, nisi stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen Ecclesiæ, si Rectori ipsius Ecclesiæ placuerit. And Mr. Lindwood in his Gloss adds,

Et scias quod in istis decimis mere personalibus quæ considerantur ex solo lucro deducuntur expensæ tam in re quam circa rem & extra rem factæ. Et nota quod de solo lucro debetur hæc decima, unde si emens merces eam non vendat sed domi vel sibi retineat, non tenetur decimare quia non lucratur.

Lindwood cap. *Quoniam propter verb. decimæ personales.*

What personal Tithes are, and where payable.

The Canon.

Verbo negotiationis.

So that it appears by the Canon Law, that every one ought to pay for a personal Tithe, a tenth part of all his clear gains, deducting all his charges and expences for a personal Tithe; but if a man buy Merchandizes, and do not sell them to profit, or give them, or make use of them himself, no Tithe is to be paid, because there is no gain made of them.

2 E.6.c.13. Now let us see, what the Statute of 2 E.6. says to us, concerning personal Tithes, and by that Stat. it is enacted.

The Statute for personal Tithes. *That every Person exercising, merchandizing, bargaining and selling, cloathing, handicraft, or other art or faculty, being such kind of persons, as then before within forty years had accustomably used to pay such personal Tithes, or of right ought to pay (other than such as be common day Labourers) shall yearly pay for his personal Tithes the tenth part of his clear gains, his charges deducted.*

And where handycraft men have used to pay their Tithes within this forty years, the same Custom of Tithes is to be observed, and if any Person refuse to pay his personal Tithes, &c. It shall be lawful to the Ordinary of the same Diocese to call the same Party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the Parties own corporal Oath concerning the true payment of the said Tithes.

This

This Act of Parliament reſtrains the Canon Law in two things; firſt, where the Canon was general, that all perſons in all places ſhould pay their perſonal Tithes, the Act reſtrains it to ſuch kind of perſons only, as have accuſtomably uſed to pay the ſame, within forty years before the making of the Act. Secondly, Whereas by the Eccleſiaſtical Laws they might before this Act have examined the Party upon his Oath concerning his gain, this Act reſtrains that courſe, ſo that the Party cannot be examined upon Oath; and by this Act the day labourer is freed of the payment of his perſonal Tithes.

It cannot be intended upon this Act, that if ſuch Tithes have been ſometimes paid within forty years, that they are therefore due, but they muſt have been accuſtomably, that is conſtantly, paid for forty years next before the Act.

And if it be demanded how ſuch payment muſt now be proved forty years before the making of the ſaid Act, I anſwer, as in other like Caſes *à poſteriore* by what has been done all the time of memory ſince the Act.

There has been ſome queſtion amongſt the School-men and Canoniſts, whether perſonal Tithes ought to be paid of unlawful gain, to which you ſhall hear what a great Schoolman and Doctor ſays,

Tho. Aqu. Sum. 2. 2æ. q. 87. art. 2o. Whether due of ill gotten profit.

Quod si aliqua male acquirantur dupliciter uno modo, quia ipsa acquisitio est injusta, puta quæ acquiruntur per rapinam, furtum seu usuram, quæ bona tenetur restituere non autem de eis decimam dare, tamen si aliquis ager sit emptus de usura, de fructu ejus tenetur usurarius decimas dare, quia fructus illi non sunt de usura, sed ex Dei munere: quædam vero dicuntur male acquisita, quia acquiruntur ex turpi causa sicut de meretricio & histrionatu, & aliis hujusmodi, quæ non tenentur restituere unde de talibus tenentur decimas dare, secundum modum aliarum personalium decimarum, tamen Ecclesia non debet eos recipere, quamdiu sunt in peccato, ne videatur eorum peccatis communicare, sed postquam pœnituerint possunt ab eis de his recipi decimæ.

So that by this great Doctors opinion, it seems, that of ill gotten gain, of which restitution ought to be made, no personal Tithe is due, and yet if by ill gotten gain a field be purchased, Tithe ought to be paid of the fruits thereof, but of ill gotten gain, where no Restitution is to be made, there Tithes ought to be paid, but not received by the Church, till the sinner have repented him of the evil, and after such repentance the Church may receive them.

These personal Tithes are accompted amongst the offerings, of which we are

to

to speak next, and ought by the Parishioner to be offered to the Church where due; but I am of the opinion of him, that said.

He decima personales magis difficultate & subtilitate quàm utilitate existunt.

It hath been resolved, that Servants in Husbandry shall not pay any personal Tithe. Roll 1.646. a. 1.

CHAP. XXIII.

The Twenty Third Chapter shewes, what Oblations, Offerings, &c. are, and where due.

Oblations and Offerings what and where due.

OFferings are defined by the Canonists to be,

Quecunque à piis, fidelibus Christianis offeruntur Deo & Sanctæ Ecclesiæ, sive res soli, sive mobiles sint, nec refert an legantur Testamento, aut aliter donentur.

It should seem, that in the time of Popery, there was an expectation, that every one present at Mass should offer something; for St. *Gregory* tells us, *Quod omnis Christianus procuret ad missarum so-* Greg. 78. habetur de Consecrat. dist. 1.

lennia aliquid Deo offerre.

Becan. Sum. Theo. l. 3. q. 86.

But *Becanus* a learned Jesuite is more moderate; for he tells us, *Quod nemo tenetur ad illas Oblationes, nisi vel necessariæ sint ad sustentationem ministrorum, vel consuetudo ad eas alicubi obliget.*

And these Offerings belonged properly to the Priest or Minister of the Church or Place where they were made; for so is the Canon of Pope *Damasus.*

Can. Damas. Pap. *Et habetur* 10. q. 1.

Quod Oblationes quæ intra sanctam Ecclesiam offeruntur, tantummodo Sacerdotibus qui quotidiè servire videntur, licet comedere & habere, &c.

But it should seem, that private Chappels carried away many of the offerings belonging to the Mother Churches, to avoid which *Othobon* the Popes Legate here made a Canon to remedy that mischief to this purpose,

Cap. *De Oblationibus.*

Quod Capellani ministrantes in Capellis hujusmodi, quæ salvo jure matricis Ecclesiæ sunt concessæ, universas Oblationes & cætera quæ ipsis non recipientibus ad Ecclesiam matricem provenire deberent, ipsius Ecclesiæ Rectori sine difficultate restituant, cum illud tanquam alienum juste nequeant retinere. Si quis autem restituere contempserit, suspensionis vinculo quousque restituerit se noverit innodatum.

So that it seems by this Canon, that Chappels that had parochial Rights, the Chaplains of them might retain the offerings,

rings, but where the parochial Rights were owed to the Mother Church, the Chaplains of such Chappels were to accompt to the Rector of the mother Church: for the Offerings made at such Chappels.

There was another Canon made by *Simon Mepham* Archbishop of *Canterbury*, and his Clergy in the year of our Lord 1328. reciting.

Quia quidam maledictionis filii in nubentium solemniis, purificationibus mulierum, mortuorum exequiis, & aliis, in quibus ipse dominus in ministrorum suorum personis solebat oblationum libamine popularitèr honorari, ad unius Denarii, vel alterius modicæ quantitatis oblationem, populi devotionem refringere sunt moliti, residuum oblationis fidelium suis, pro libito, vel alienis usibus multoties applicantes. Præsentis declaratione Consilii declaramus & pronuncianmus, omnes & singulos in præmissis, vel eorum aliquos imposterum delinquentes, vinculo majoris excommunicationis involvi. Cap. *Quia quidam maledictionis, &c.*

So that upon the whole matter it appears, there were some offerings free and voluntary, which the Parishioners or others were not bound to perform, but *ad libitum.* There were others by Custom certain and obligatory, as those for Marriages, Christnings, Churching of Women, Burials, &c. and that these were all

all due and belonged to the Parish Priest or Minister, that officiated at the Mother Church or Chappels that had parochial Rights, the other Chappels that had not parochial Rights were to accompt to the Rector for the Parish Church: now let us see what the Statute of 2 E. 6. says, by which it is enacted.

2 E. 6. c. 13. *The Statute for Offerings.*

That all and every Person or Persons which by the Laws and Customs of this Realm ought to make or pay their offerings, shall yearly from thenceforth well and truly content and pay, his or their offerings to the Parson, &c. of the Parish, or Parish where it shall fortune or happen him or them to dwell or abide, &c.

Those offerings which were free and voluntary are now vanished, and are not comprehended within this Law; but those that were customary and certain, as for Communicants, Marriages, Christenings, Churching of Women and Burials, are confirmed to the Parish Priest, Vicars and Curates of the Parishes where the parties live that ought to pay the same, and they are only recoverable in the Spiritual Court, or an Action I conceive may be formed upon this Statute at Common Law.

CHAP.

CHAP. XXIV.

The Twenty Fourth Chapter shews, what Mortuaries are, and in what Cases they are due at this day, and how much is to be paid for the same.

BY a Provincial Canon made by *Simon Langham* Arch-Bishop of *Canterbury* and his Clergy in the Year of our Lord 1378. It was decreed,

Worre, and what is due for Mortuaries.

Quod si decedens tria vel plura cujuscunq; generis in bonis suis habuerit animalia, optimo cui dabitum de jure fuerit reservato; Ecclesiæ suæ, à qua Sacramenta recepit, dum viveret, sine dolo, fraude seu contradictione qualibet pro recompensatione subtractionis decimarum personalium, nec non & oblationum secundum melius animal reservetur post obitum pro salute animæ suæ Ecclesiæ suæ hujusmodi liberandum: quod si duo tantum in bonis decedentis extiterint animalia, de mansuetudine Ecclesiæ vxalio qualibet nomine mortuarii remittatur, quodque si Mulier viro superstite obierit, ad solutionem mortuarii minime arceatur. Sed si post obitum mariti, in domo cum familiæ regimine vidua per annum supervixerit, juxta formam

Cap. *Statutum & infra*, &c. *The Canon.*

superius

superius scriptam, ad mortuarium obligetur: Hac autem interpretatione, consuetudini laudabili super mortuariis in nostra provincia aliter observare nolumus, præjudicium generari; quin si decedens numerum hujusmodi animalium habuerit seu non habuerit, vir ve aut uxor prius vel post decesserit. Super præstatione Mortuarii consuetudo Ecclesiastica observetur: ad solutionem autem debiti de jure vel consuetudine mortuarii renuentes, volumus per ordinarios locorum censura Ecclesiastica coerceri.

How far this Canon was obeyed in *England* I can give no accompt, but I have not found the English willing to have their Estates taken from them by Canons, nor have found that any prohibitions have been granted in case of Mortuaries; nor have I observed any complaints in Parliament against them (save that 2 R. 2. It is pray'd that Parsons and Vicars might not require Mortuaries of the Armour of any Man, but that it might remain to their Executors) till the 21 *H.* 8. and then they were setled by Statute as follows.

Stat. 21 H. 8. cap. 6. *The Statute for Mortuaries.*

1. *That no Man should pay a Mortuary unless he died possessed of Goods to the value of ten Marks, that is, six pounds thirteen shillings and four pence.*

2. *That no Mortuary should be paid or demanded, but in such places where they have*

have used to be paid or given.

3. *That they should be paid but in one place, and that at the parties most usual dwelling and habitation, and there but one Mortuary, and that after the rate following, that is to say.*

4. *That if the decedent at the time of his death, had in moveable Goods to the value of ten Marks clearly, his debts first paid and under the sum of thirty pounds, then he should pay three shillings and four pence and no more, and this must be in moveables, and not in Chattels as Leases for Years, &c.*

5. *That if the decedent died possessed of moveables of the value of thirty pounds, and under the value of forty pounds, to pay six shillings and eight pence for a Mortuary.*

6. *If the Decedents Goods be of the value of forty pounds or upwards, then to pay ten shillings for a Mortuary.*

7. *That no married Woman, Child, or Person not keeping House should pay any mortuary, nor a wayfaring Man, or other that was not resident where he died, but those to pay where they were last resident.*

8. *The Parson or Vicar are not by this Act barred of any Legacy given, or offering to be made to them.*

9. *No*

9. *No Mortuary to be paid in* Wales, Gallis or Barwick, *or in the Marches of* Wales, *but where accustomed.*

10. *It is provided that the four* Welch *Bishops, and the Arch-Deacon of* Chester *may, notwithstanding this Act, take their accustomed Mortuaries.*

11. *That where less hath accustomably been taken for Mortuaries than is limited by the Act, there no more than is due by the Custom shall be taken.*

2 Inst. 491. *Mortuaries due only by Custom.*

Sir *Edward Coke* is of opinion that there were no Mortuaries due before this Act, by any Law, but by Custom only, by reason of the words in the Statute of *Circumspecte Agatis* which are, *ubi mortuarium dari consuevit*, &c.

This duty was formerly only suable for in the Court Christian, but now I conceive an Action of debt will lye at Common Law upon this Statute, for though this Statute is only negative, that they shall not take above such rates, yet it implies affirmative, as the Statute of 2 E. 6. for buriel Grounds, and the Statute for the Sheriff's Fees, and dues, other Statutes.

Mortuaries to the King by Bishops.

For those Mortuaries that Prelates antiently paid to the Kings of this Realm, I shall not trouble the Reader with, but refer those that are curious to inform themselves, to Sir *Edward Coke's* Commentary upon *Magna Charta.*

2 Inst. 491.

In

In the Tenth of *H.* 4. A Vicar claimed a Mortuary by Custom, and not by the Canon, or any other Law, *quod nota.* 10 H. 4. 1. b.

These Mortuaries are in some places called coarse presents, or coarse presentees, as Doctor *Cowel* says, because where due, they used to pay before the Coarse was buried, when it was brought to be buried. *Their names.*

The Bishop of *Chester* claimed by Custom upon the death of any Priest, dying within the Archdeaconry of *Chester* for a Mortuary, his best Horse or Mare, Saddle, Bridle and Spurs, his best Gown, a Cloak, his upper Garment, next it his best Hat, his Tipper, his best Signet or Ring, and this Custom was denyed by the Plaintiff in a Prohibition, but what the Success was I have not heard, but the Mortuaries due to the Archdeacon of *Chester* are excepted: And the Bishop of *Chester* holds that Archdeaconry, as I have been informed, in the nature of *a Commendam*, and executes it by a Deputy. Cro. Car. 237, 238. *Bishop of* Chester *his demand as Archdeacon of* Chester.

CHAP.

CHAP. XXV.

The Five and Twentieth Chapter shews, how Tithes are to be paid in London.

Tithes in London, how to be paid.

THE Livelyhood of the Clergy in *London*, I mean the secular Clergy, consisted heretofore chiefly in voluntary offerings and Personal Tithes, which little differ from voluntary offerings. For though a great Doctor tells us that,

Hostiensis c. Omnis Christianus.

In præcipuis festivitatibus tenetur quis offerre, & cogi potest, maxime cum sit quasi generalis consuetudo ubique terrarum, &c.

Idem de Parœc. Sect. *In quibus*, &c.

And if you ask him which are those Feasts at which the People are bound to offer, he tells you, *Dies dominicos, & dies festivos.*

But there being no Canon or Law that prescribes any certainty in the quantity, value, or things to be offered. I can give them no properer name than voluntary or free-will offerings. But no sooner was Popery abolished in this Nation, but these voluntary offerings and personal Tithes soon came to little. And notwithstanding it was enacted by the Statute of 2 E. 6.

That

That all that by Law or Custom were bound to make their offerings should thenceforth pay them to the Parson, &c. yet that did not much amend the matter, so that the maintenance of the secular Clergy in *London* was brought to a very low ebb, there being no Tithe as hath been said, chargeable upon houses, unless by way of a *modus decimandi*, whereupon the Clergy of *London* in the 37th. year of the Reign of King *H.* 8. made their application to the Parliament, and obtained an Act of Parliament for the confirming a Decree made by the Archbishop of *Canterbury* and divers other great Lords of the Kingdom, to settle the matter, the effect whereof follows, which is printed amongst the other Acts of Parliament.

Stat. 37 H. 8. c. 12.

1. *That the Citizens of* London *from* The Decree.
thenceforth for ever should pay yearly without fraud or guil to their Parsons, &c. for the time being, for every ten shillings rent of all houses, shops, warehouses, cellars and stables within the said City of London, *and the Liberties of the same* 2 d. ob. *and for every* 20 s. *rent,* 5 d. *and so ascending for every ten shillings rent.*

2. *That if any dwelling houses, shops, &c. should be leased by fraud or covin, reserving less Rent than hath been accustomed, or shall by reason of Fine, or by fraud or covin, make any Lease without reserving a-*

ny Rent, then the Farmer or Tenant shall pay after the same Rate the said house, &c. was last set for, without Covin; but note, that if the house, &c. be let at a great Rent as the same was set at, at the time of the making of the said Statute, then no Fraud can be querred, although a Fine or Income was given for the said Lease.

3. That if a house, &c. be leased, and no Rent at all reserved, then such house, &c. shall pay such rate as the same was let for at the time of the making of the said Statute, but where greater Rent is reserved, it is to pay according to the best improved value.

2 Inst. 659.

But where Houses had been always held by the Owners, and by consequence, no Rent paid, that is casus omissus in this Statute, and such houses will be freed of payment of Tithes by this Law.

2 Inst. 660.

But if it were a house that yielded Rent at the time of the making of the Decree, and be now let without Rent, it shall pay Tithe according to the Rate it was set for at the making of the Decree, although no Fine at all were paid for such Lease.

5. The Tithes upon this Decree cannot be sued for in the Ecclesiastical Court, because the Act it self declares how they shall be recovered.

6. That if the Owners held the houses themselves, then they shall pay Tithe after the rate the same were set for at the time of the Decree.

7. That

7. That if any perſon take any houſe, &c. by Leaſe, and he and his Executors, &c. live in part of it, and ſet out part, the principal Farmer or Taker, his Executors, &c. ſhall pay their Tithes for his and their Parts after the rate aforeſaid, and of ſuch part as is farmed out according to the rate it is ſet at. And in the ſame manner Tithes are to be paid, where one takes a Leaſe of ſeveral houſes, and lets out part, and holds any part himſelf.

8. That if any Farmer, or his Aſſigns ſhall farm all the houſes, &c. ſo farmed to one or divers Tenants, the Tenant ſhall pay Tithes according to the Rent reſerved.

9. That if dwelling houſes ſhall be converted into Ware-houſes, or è converſo, yet they ſhall pay Tithe according to the Rate aforeſaid.

10. That if a Dye-houſe or Brew-houſe be let with the Implements, then a third penny of the Tithes after the rate aboveſaid to be abated.

11. That where a manſion houſe with ſhops, ſtables, wharfs, with Cranes, Timber-yard or Gardens belonging to the ſame, and occupied together ſhall afterwards be ſevered, or were ſevered within 8 years before the Decree, that then the Farmers of the ſhops, ſtables, &c. ſhall pay Tithes according to the rate aboveſaid.

12. That theſe Tithes ſhall be paid quarterly at Eaſter, Midſummer, Michaelmas and Chriſtmas.

13. That any Householder, that holds a house of 10 s. Rent, or above, shall be acquit of his Offerings; but his Wife, Children, and Servants shall pay 2 d. yearly for their four Offering days, receiving at Exster.

14. That if any house of 10 s. Rent or above, shall be let by parcels under 10 s. Rent, then the Owner, if he live in any part of the house, or the chief Tenant, shall pay the Tithe after the rate as the same house was accustomably letten before such Division, and the Sub-Tenants that hold less than 10 s. per annum, without fraud or covin shall pay 2 d. yearly for their Offerings.

15. That no Tithes shall be paid for any Gardens belonging to any Mansion house, and which are held for pleasure; but if such Garden contain half an Acre of ground or more, and shall make any yearly profit by Sale, then the same to be paid for, according to the rate abovesaid.

16. This Act is not to extend to the houses of Noblemen or Noblewomen whilst they are kept in their own hands, and not lett for Rent, and which formerly paid no Tithe, so long as the same continue unletten, nor to the Halls of any Craft or Companies so long as the same are unletten, and in times past paid no Tithes.

17. That Shedds, Stables, Cellars, Timber-yards and Tenter-yards, which were never

never parcell of, or belonging to any dwelling House, and which has not been used to pay Tithes, shall be acquit of the payment of Tithes, as hath been accustomed.

18. *But if by Custom any lesser rate have been paid than after the rate of two shillings and nine pence in the pound, then the accustomed rate only to be paid.*

19. *The Lord Major of the City of* London, *by the advice of Councel is Authorized by the said Act, to hear and determine all differences arising upon this Decree, and give costs according to the intent thereof.*

20. *That if the Major do not make an end of such differences within two Months after complaint; or if any Person find himself agrieved by his Decree, then the Lord Chancellor within three Months after complaint to him made, shall make an end of the differences with costs,* &c.

21. *That if Rents fall by reason of decay or burning, to less than they were accustomably letten, that then the Tithes during such Term, shall be paid according to the Rent reserved.*

This is a short abstract of that great Decree which I have inserted here for the use of the Clergy of that City, I shall only add some other resolutions upon this Decree, and conclude this Chapter.

Noy. 130. *Where Suits for Tithes in* London *shall be determined.*

In a Case between Dr. *Meadhouse* and Dr. *Tayler*, it was resolved, that Suits for Tithes upon this Decree should be before the Maior in writing, and not by Parol.

2. That a Reservation by a Leasor for life upon a Lease by him made for years, shall not bind him in reversion to pay Tithes according to that rate.

3. That a Rent for half a year, and after for another half year is a yearly Rent within this Decree.

Cro. El. 276. It hath been resolved, that Abbey Lands within the City of *London*, and the liberties thereof are not freed from the payment of Tithes within the Statute of 31 *H.* 8. because the Statute and Decree for the payment of Tithes within the City and Liberties of *London* was made after the Statute of 31 *H.* 8. and their Privileges are not reserved.

2 Inst. 660.. And it hath been resolved, that if any Suit be brought in the Ecclesiastical Court, or any other Court than is directed by the Act, a Prohibition lyes.

2 Inst. 690.. Lastly, where the Decree says (where no Rent is reserved by reason of any fine or income paid before hand) that is put only for Example, for if no Rent be reserved for this, or any other cause or consideration, it is within the meaning of this Clause.

CHAP.

CHAP. XXVI.

The Twenty Sixth Chapter shews, in what Courts the Right of Tithes is determinable, and how, and in what manner to be recovered, and in what Cases Prohibitions are usually granted, and how prosecuted and defended.

THat Tithes were anciently determinable in the County and Hundred Courts, is asserted both by Sir *Edward Coke* and Mr. *Selden*: And the same appears by the Laws of King *Ethelstan* long before the conquest; and Mr. *Selden* is of opinion, that the Bishops consistory here in *England* was not setled till the time of *William* the Conqueror, who by his Charter commands, *ut nullus Episcopus vel Archidiaconus de legibus Episcopalibus amplius in Hundredo placita teneant, nec causam quæ ad regimen animarum pertinet ad judicium secularium hominum addueant, sed quicunque secundum leges Episcopales de quacunque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus elegerit & nominaverit, veniat, ibique*

2 Inst. 661. Seld. hist. decim. 412. Laud. Saxon Laws 43.

Seld. 414.

bique de causa sua respondeat, & non secundum Hundret. sed secundum Canones & Leges Episcopales rectum Deo & Episcopo suo faciat. And closes thus, *Hoc etiam defendo, ut nullus Laicus homo de legibus, quæ ad Episcopum pertinent se intromittat*; yet notwithstanding as Mr. *Selden* observes, the Jurisdiction of Tithes was not so settled in the Bishop and Ecclesiastical Courts, but there were Suits for Tithes as well in the Temporal as Ecclesiastical Courts, whereof he gives some Instances. And amongst the Laws of King *H.*1. I find this Clause, *Si quis rectam decimam superteneat, vadat præpositus Regis & Episcopi & terræ domini cum prethynco, & ingratis auferant, & Ecclesiæ cui pertinebit, reddant, & novam partem relinquant ei qui decimam dari noluerit.*

Seld. 414. &c.

Leg. H. 1. c. 11. Lamb. 182.

But the Law hath been now long setled that the Ecclesiastical Courts have in some cases the power to determine the right of Tithes, and in all cases to hold plea for the subtraction and withholding of Tithes, and confirmed by several Acts of Parliament.

35 H. 6. 39. 38 H. 6. 22. per *Fortescue.* *Where the Spiritual Court may determine the Right of Tithes.*

To the first, if a dispute happen between two Parsons, to which of them the Tithes belong, whether to the one by parochial right, or the other as a portion belonging to his Rectory by prescription, and both Parsons claim by presentation under the same

same Title, so that the right of Patronage comes not in dispute, the right of these Tithes shall be determined in the Ecclesiastical Court, and no Prohibition or *Indicavit* shall hinder it, and this suit in the Ecclesiastical Court is called a spoliation.

And this Jurisdiction is so peculiar and annexed to the Spiritual Courts, That if the one Parson should bring an Action of Trespass at Common Law against the other Parson, for the taking and carrying away Corn or other things set out for Tithe, the Defendant may by way of plea shew, that the Goods in question were Tithes set forth and severed from the nine parts, and that he is Parson of *Dale*, and that he and all his predecessors time out of mind have had these Tithes as a portion which belonged to his Church, and that the Plaintiff being Rector of the Parish where they grew, claims them as his Tithes, and demand Judgment if the Kings Court will hold plea, by such plea the Kings Court shall be ousted of Jurisdiction, but if the dispute in such Action fall out in pleading to be about the bounds of the Parishes, then the King's Court shall not be ousted of Jurisdiction.

38 H.6. 21.
5 H.5. 40.
14 H.4. 17. a. b.

Where the Temporal Courts have not Jurisdiction of Tithes.

5 H.6. 10.
50 E.3. 20.
38 E.3. 6.
39 E.3. 23
5 H. 5. 10.
1 H. 6. 5.
44 E.3. 39.
20 H. 6. 17.

And so it is if the question be between the Farmer, Bayly, or Servant of the one Parson, and the Farmer, Bayly, &c. of

2 H.4. 15.
31 H.6. 11.
2 E.4. 15.

of the other, or the other Person himself in such cases, though the dispute does appear to be concerning the right of Tithes between the Persons yet the Court shall not be ousted of the Jurisdiction because they are not both Clergy Men.

But in all these cases where the right of Tithes is in dispute between one Parson and another, in whose names soever the Suit is in the Spiritual Court, I conceive no prohibition lies, if both Parsons come in by the same Title of patronage, so that the right of patronage come not in dispute.

40 E. 3. 28. 35 H. 6. 39. And I take the Law to be the same where the question arises between the Parson who is patron, and the Vicar: whether Tithes belong to the Parson or Vicar?

West. 2. c. 5. *Circumspecte Agatis, Articuli Cleri.* cap. 2. *Where the Spiritual Court cannot determine the right of Tithes.* But where the right of Tithes is controverted between two Clergy Men which come into their Churches by several patrons, there in that case the Spiritual Court hath not Jurisdiction to determine the right of the Tithes, if they amount to the fourth part of the yearly value of the Church; but the Title is to be determined by writ of right, of Advowson of Tithes as shall be shewed more at large, when I shall come to shew in what cases the right of Tithes is determinable in the Kings Court. But in that case

cafe if the Tithes in queſtion do not amount to the fourth part of the value of the Church, the Eccleſiaſtical Court may determine the right in a ſpoliation. F.N.B. 37. E.

But the Juriſdiction of the Eccleſiaſtical Courts to hold plea for the ſubtraction and withholding of Tithes, as the ſame hath been very antient, ſo it hath been confirmed by ſeveral Acts of Parliament as I ſhall ſhew, the firſt of which is that of *circumſpecte agatis*, made in the ninth Year of *E.* I. by which it is enacted, That, *Si Rector petat verſus parochianos oblationes & decimas debitas & conſuetas; vel ſi Rector petat verſus Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris Eccleſiæ; Item ſi Rector petat mortuarium in partibus ubi mortuarium dari conſuevit; Item ſi prælatus alicujus Eccleſiæ vel advocatus petat à Rectore penſionem ſibi debitam, omnes hujuſmodi petitiones ſunt faciendæ in Foro Eccleſiaſtico*, &c. and concludes, *In omnibus prædictis caſibus habet Judex Eccleſiaſticus cognoſcere, Regia prohibitione non obſtante.*

Spiritual Juriſdiction confirmed by ſeveral Acts of Parliament.

By the Statute de circumſpecte Agatis.

There hath been ſome queſtion made whether this were an Act of Parliament or not, but it is proved by Sir *Edward Coke* by many unanſwerable reaſons to be an Act of Parliament, and ſo agreed by Mr. *Selden*, and almoſt all others.

That it is an Act of Parliament. 2 Inſt. 487. Seld. hiſt. decim 424.

Secondly,

And extends to all England.

Secondly, admitting it to be an Act of Parliament, it hath been doubted whether it extended further than to the Diocess of *Norwich*, it seeming to be appropriated by the penning to that Diocess alones but by the general opinion of the learned it extends to all other Diocesses, and *Norwich* is only put by way of example.

2 Inst. 487.

Observations in the penning of it.

And the prudent penning of this Law by our Ancestors deserves the Reader's observation, how careful they were to preserve their own rights and avoid the incroachments of the Clergy, who were in those days very powerful, for first, they would not give way to the Canons to destroy their Customs and Prescriptions allowed by the Common Law, and therefore give the Spiritual Judg Jurisdiction of Tithes and Oblations (*debitas & consuetas*) only.

2. They would not expose their rights of Patronage to the determination of the Spiritual Judg, and therefore this condition is annexed, *Dummodo non petatur quarta pars valoris Ecclesiæ.*

Lastly, they would not subject themselves to pay Mortuaries according to the Canon Law, but *ubi dari consuevit*, so that if any Suit were sued for Tithes, Offerings, Mortuaries, not due as well by Custom as Common Law, a Prohibition lay, and doth lye at this day. The

The ſecond Statute concerning the Juriſdiction of the Spiritual Courts in caſes of Tithes, is the Statute of *Articuli Cleri*, but I ſhall paſs it by here till I come to ſpeak of the Writ of *Judicavit*.

The next Statute I meet with that concerns this matter, is the Statute of 18 E. 3. *cap.* 7. which I ſhall paſs by alſo till I come to ſpeak of the determination of the right of Tithes by *ſcire facias*. 18 E. 3 c. 7.

There was another Statute made 1 *R.* 2. it is *Cap.* 13. for the puniſhing of ſuch as indicted thoſe that ſued in the Spiritual Courts for ſubtraction of Tithes, or compelled them to deſiſt by Bonds or otherwiſe, but that Law being now become obſolete, and beſides my purpoſe, I ſhall proceed to the Statute of 27 *H.* 8. by which it is enacted, 1 R. 2. c. 13.

That every Subject of England, Ireland, Wales, Callais, *and the Marches of the ſame, ſhould according to the Eccleſiaſtical Laws and Ordinances of the Church of* England, *and after the laudable Uſages and Cuſtoms of the Pariſhes or other places where he dwells or occupies, ſhall yield and pay his Tithes and offerings, and other duties of holy Church: And that for ſubtraction of ſuch Tithes,* &c. *may by due proceſs of the King's Eccleſiaſtical Laws conſent the Perſon,* &c. *ſo offending, before his Ordinary or other competent Judge,* &c. 27 H. 8. c. 20.

having

having Authority to hear and determine the right of Tithes, &c. And to compel the party offending to do and yield their duties in that behalf. And in case the Ordinary, &c. for any contempt, contumacy, disobedience or other misdemeanour of the Party Defendant, shall make information to any of the Kings most Honourable Councel, or to the Justices of the Peace of the Shire where the Offender dwells to assist and aid the Ordinary, &c. and to order and reform any such Person, in any Cause before rehearsed, that then he of the Kings Councel, or such two Justices of the Peace, whereof one to be of the Quorum, to whom such information or request shall be made, shall have power to attach, or cause to be attached the Person, or, &c. against whom such information shall be made, and to commit the same Persons to Ward, there to remain without Bail or Mainprise until he, &c. shall have found sufficient Surety to be bound by Recognisance or otherwise, before the Kings Counsellor, or, &c. or any other like Counsellors, or Justices, &c. to the use of the King, to give due obedience to the Process and Proceedings, Decrees and Sentences of the Ecclesiastical Court wherein such Suit, &c. shall depend or be. And further gives power to the said Counsellor, or to two Justices of the Peace, whereof one to be of the Quorum, to take, receive, and Record such Recognizance and Bonds.

There

There is a Proviſo in this Act, that it ſhall not extend to London.

And another Proviſo that the Party ſued may have all legal Defences, Appeals and Prohibitions.

And it is to be obſerved that this Law extends to all ſort of Tithes, mixt and Perſonal, as well as Predial. *Obſervations upon this Law.*

Next, he that will have the benefit of this Law muſt ſue for the ſingle value, and not for the double value upon the Statute of 2 *E.* 6.

Thirdly, the Plaintiff in the Eccleſiaſtical Court may proceed upon this Act for contempt, contumacy, or miſdemeanour, as well before as after Sentence.

Fourthly, The ſecurity upon this Act, may as well be by Bond as Recognizance.

Laſtly, obſerve the wary penning of this Act, they muſt pay their Tithes and other Church Duties, according to the Eccleſiaſtical Laws and laudable Cuſtoms and uſages of the place, next, if it be demanded before whom Suit upon this Statute ſhall be made, it is anſwered by the Statute it ſelf, it muſt be before ſuch Judg as hath Juriſdiction of the Cauſe, ſo that it creates or enlarges no Juriſdiction.

The next Act of Parliament concerning this matter, is the Statute of 32 *H.* 8. *by* 32 H. 8 c. 7.

which

which it is enacted, that all and singular persons, &c. shall fully, truly and effectually divide, set out, yield or pay all and singular Tithes and Offerings, according to the lawful Customs and Usages of the Parishes and Places where, &c. and in case any person, &c. to detain or withhold any of the said Tithes or Offerings, or any part or parcel thereof, that then the person lay or, &c. shall and may convent the person or, &c. before the Ordinary, &c. according to the Ecclesiastical Laws, &c. and so proceed to Sentence according to the Process and course of the Ecclesiastical Laws.

And that if any Party appeal against the Judges Sentence, he shall then assess the Costs of his Suit therein before expended, and shall compel the Appellant to pay the said costs by the compulsory Process and Censures of the said Laws, taking security of the said Party, to whom the said costs shall be paid, to repay the same if the Appeal be adjudged against him.

And if any Person after Sentence definitive given against him, shall obstinately and wilfully refuse to pay their Tithes or the sum adjudged, that then two Justices of the Peace, whereof one shall be of the Quorum, shall, &c. upon Information, Certificate, or complaint to them made by writing, by the said Ecclesiastical Judg, &c. cause the party refusing to be attached and committed to the next Goal, there to remain till he, &c. have

have found ſufficient ſureties to be bound by Recognizance, or otherwiſe before the ſame Juſtices to the uſe of the King to perform the ſaid definitive ſentence.

Provided that no Perſon or, &c. to be ſued or otherwiſe compelled, to yield, give or pay any manner of Tithes for any Mannor, Lands, &c. which by the Laws or Statutes of this Realm are diſcharged, or not chargeable with, &c. Tithes.

Provided that this Act ſhall not extend, or be expounded to give any remedy, cauſe of Action, or Suit in the Courts Temporal againſt any Perſon, &c. which ſhall refuſe or deny to ſet out his or their Tithes, or which ſhall detain, with-hold or refuſe to pay his Tithes or Offerings, or any parcel thereof; but that in all ſuch Caſes the perſon or perſons, being Eccleſiaſtical or Lay Perſons, having cauſe to demand or have the ſaid tithes or Offerings, or thereby wronged or grieved ſhall take and have their remedy for their ſaid Tithes and Offerings in every ſuch Caſe in the Spiritual Courts, according to the Ordinance in the former Part of the ſaid Act mentioned, and not otherwiſe, any thing, &c.

Obſervations upon this Statute.

1. It appears by the Preamble of this Law, that this Act was particularly deſigned for the relief of Impropriators, who before this Act were not capacitated to ſue in the Spiritual Courts for the ſubtraction of Tithes, and were hard put to it to find any other relief.

2. Where by the former Act the Party for Contumacy, &c. might be compelled to give security before Sentence, in this Case of the Lay Impropriators, the Party cannot be compelled to give security till after definitive Sentence.

3. Upon this Law there must be two Sureties at least, upon the former one sufficed.

4. The security in this, as the former, may be by Bond or Recognizance.

5. Whosoever will have the benefit of this Act must sue particularly upon this Law, for the single value, and not for the double value upon the *Stat.* of 2 E. 6.

6. This Law extends as the former did to all manner of Tithes and Offerings.

7. *London* is excepted out of this Act as it was in the former.

8. This Law only extends to customary Tithes, and not for Tithes due by Canon and Ecclesiastical Laws.

9. This Act only extends to such as shall obstinately and wilfully refuse to perform the Sentence of the Ecclesiastical Judge, and for no other contempt or neglect.

10. Lastly, this Act restrains the Suit to the Ecclesiastical Court upon this Statute, otherwise an Action, as should seem, might have been brought at Common Law upon this statute for not setting forth, &c. of their Tithes.

But

But diverſe defects appearing in this Law, eſpecially to the Lay Impropriators, they obtained a more effectual Law for their purpoſe in the 2 E. 6. by which it is enacted.

That if any Perſon carry away his Corn or Hay, or other predial Tithes before the Tithe thereof be ſet forth, or willingly withdraw his Tithes of the ſame, &c. that then upon due proof thereof made before the Spiritual Judge, or any other Judge to whom heretofore he might have made complaint, the Party ſo carrying away, withdrawing, letting or ſtopping, ſhall pay double the value of the Tenth or Tithe ſo taken, loſt, withdrawn or carried away, over and beſides the coſts, charges and expences of the Suit in the ſame, the ſame to be recovered before the Eccleſiaſtical Judge according to the Eccleſiaſtical Laws. Stat. 2. E. 6. cap. 13.

There is a Proviſo in this Act, that gives occaſion of many Prohibitions to this effect.

That no perſon ſhall be ſued, or otherwiſe compelled to yield, give or pay any manner of Tithes for any Mannors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledg or Preſcription are not chargeable with the payment of ſuch Tithes, or that be diſcharged by any Compoſition real.

This Paragraph of this ſtatute as to the double value, extends only to predial Tithes. *Extends only to Predial Tithes.*

Tithes, as Corn, Hay, Wood, Flax, Hemp, Fruit, &c. but for mixt and perſonal Tithes, there is a Proviſion after in this Act.

Sole Juriſdiction to the Spiritual Courts.

There is alſo another Proviſo in this Statute as in the former, which reſtrains all Suits for Subtraction of Tithes to be ſued in the Eccleſiaſtical Court, and that it ſhall not be lawful to ſue any with-holder of Tithes, obventions, &c. in any other Courts; and that if the Eccleſiaſtical Judge ſhall give Sentence, no Prohibition or Appeal depending, and the Party condemned do not obey the Sentence, that then ſuch Judge may excommunicate the Party, and if he wilfully ſtand excommunicated by the ſpace of forty days next after publication thereof in the Pariſh Church, or the Place or Pariſh, where the Party excommunicated is dwelling or moſt abiding, then the Judge Eccleſiaſtical may certifie the King in Chancery, *and require Proceſs of* Excommunicato capiendo.

Excommunicato capiendo *given.*

This Clauſe extends to all manner of Tithes, Offerings, &c. but this gives no double damages for them, as the former Clauſe doth for Predial Tithes.

There is another Clauſe in this Act, that gives ground likewiſe for many Prohibitions, which is to this effect, *That the aforeſaid Clauſe ſhall not extend to give any Judge Eccleſiaſtical Juriſdiction to hold Plea of any matter, cauſe or thing repugnant*

nant to, or against, the effect, intent or meaning of the Stat. of Westm. *the second* cap. 5. *the Stat. of* Articuli Cleri circumspecte Agatis *sylvæ coeduæ, the Treatise* de Regia Prohibitione Stat. 1. E. 3. cap. 10. *or any of them, or to hold Plea in any matter, wherein the Kings Court ought to have Jurisdiction, any thing therein,* &c.

Note, that by these three Statutes before mentioned the Jurisdiction of Tithes is confirmed and restrained to the Ecclesiastical Courts.

That by the *Stat.* of 27 *H.* 8. Process for contempt is given before Sentence.

Observations upon all the Statutes.

By that of 32 *H.* 8. Process for contempt is given after Sentence definitive, but observe the different penning.

And by this last Statute a Writ of *Excommunicato capiendo* is given, if the Party continue obstinate by the space of forty days, after an Excommunication published against him; so that a man would think here were as good remedies provided for the Recovery of Tithes in the Ecclesiastical Court as could be imagined: but the Interruptions that are frequently given by Prohibitions, as shall be shewed hereafter in due place, very much frustrate the effect of the proceedings in those Courts.

And note, that a *modus decimandi* is properly to be sued for in the Ecclesiastical Courts. 2 Inst. 490.

And so having said so much concerning the Ecclesiastical Jurisdiction for the determining the right of Tithes, and relief against subtraction of Tithes, I shall in the next place shew, in what Courts, in what Cases and in what manner they are determinable in the Temporal Courts.

Selden 422. *In what Cases the Temporal Courts have, and may, determine the Right of Tithes.*

Mr. *Selden* in his History of Tithes reckons up five manner of ways, whereby the Right of Tithes may be determined in the Temporal Courts. 1. In Prohibitions, whereby the Spiritual Courts are forbidden to hold Plea, where matters happen which are only triable in the Kings Court, or where those Courts proceed against any Statute or the Common Law. 2. By Writs of Right of Advowson, whereunto may be annexed the Writ of *Indicavit*. 3. By *Scire facias*. 4. By Process mandatory to command the payment of Tithes. 5. By Suits and Actions upon the before-mentioned Statute of 27 *H.* 8. 32 *H.* 8. and of 2 *E.* 6. to which may be added the Trials at Common Law by Actions of Trespass, Assise, &c. And of these in order.

In what Cases, Prohibitions use to be granted.

And first of Prohibitions, which are frequently obtained out of the Courts at *Westminster*, Courts of great Sessions in *Wales*, and the County *Palatines*, &c. upon these grounds following.

First,

First upon a *modus decimandi*, where the Defendant in the Spiritual Court ſuggeſts, that he and all thoſe whoſe Eſtate he hath in the Lands, &c. in which, &c. have time out of mind paid ſo much yearly in money, or giving ſome other recompence in ſatisfaction of all the Tithes ariſing upon the Lands, or of all the Tithe Hay or Corn, &c. this manner of Tithing being by Preſcription, which is only and properly tryable at Common Law, if pleaded in the ſpiritual Court or not pleaded, or allowed or not allowed as a good Plea, there is a ground of a Prohibition; and what Preſcriptions and *modus decimandi* are in this Caſe approved of by the Common Law, I muſt refer the Reader to the proper Chapter before. Hob. 286. 42. 247. 2 Inſt. 610. Co. Entr. 459. d. 460. b. Co. 2. 44. Dyer 74. p. 49. *Modus decimandi.* Cap. 16. antea.

2. If the Bounds of a Pariſh come in diſpute, whether the place where the Tithes ariſe be in this, or that Pariſh, this is a matter tryable by Jury, and therefore upon the ſuggeſtion of this matter a Prohibition will be granted. *Bounds of the Pariſh.* Co. 7. 44. b. Roll 2. 291. l. 15. Cro. El. 228.

3. If Lands be pretended to be diſcharged of Tithes by the Statute of 31 *H.* 8. or any other Statute, a Prohibition lyes becauſe it properly belongs to the Judges of the Common Law to expound all Statutes, &c. ſo if the ſuggeſtion be grounded upon the *Stat.* of 2 *E.* 6. for barren grounds, &c. *Monaſtery Lands diſcharged of Tithes.* Co. Ent. 450. C. 453. d. *Porter verſ. Rechester.* m. 6. Jac. C. B.

Roll 2.307. v. 13.
Suits for things not Tithable.

4. If one sues in the spiritual Courts for the Tithes of things not Tithable by the Common Law, for which see *cap.* 12. before, or for the Tithes of great Woods above twenty years growth, it is a ground for a Prohibition.

Roll 2.286. l. 4.
For matters determinable at Common Law.

5. If a Suit be brought in the Spiritual Court for the taking and carrying away of Tithes, after the Tithes are set forth and divided from the nine parts by the Parishioner, unless the Suit be between two Ecclesiastical Persons in their proper Rights, a Prohibition lyes, because 'tis matter triable at Common Law.

Cro. El. 228. 642. Rolls 2. 302. q. 19. 23, 24. v. 16.
For irregular Proceeding of the Spiritual Courts.

6. If the Spiritual Court will not admit a Legal defence, as a Release, an accord with satisfaction, an award, *&c.* or if the Spiritual Judge refuse to admit the Defendant to traverse the Plaintiffs Title, that he is not Parson, Vicar, *&c.* a Prohibition will be granted, but if the Defendant in the Spiritual Court alledg such matter against the Plaintiff there, which is properly triable in that Court, as Simony, *&c.* in such Case no Prohibition will be granted.

Cro. El. 666. Roll 2. 300. q. 6, 8, 9. 301. q. 14, 15.
Disallow proof by one witness.

7. If the Spiritual Court shall disallow the proof of the setting forth of the Tithes by one witness, Prohibitions have been granted. *Contrà Co.* 12. 65. *Ideo quære.*

There are many more Cases, wherein Prohibitions have been granted, but these are

are the moſt frequent, and may ſerve for a taſte. And indeed Prohibitions are granted in all Caſes, where they exceed their Juriſdiction.

By the Statute of 2 E. 6. *It is enacted, that no Prohibition ſhall be granted in matters of Tithes in any of the Kings Courts, unleſs the Party that requires the ſame bring and deliver to ſome of the Court, where he prays ſuch Prohibition, a true Copy of the Libel ſubſcribed by the hand of the Party, and the ſuggeſtion underwritten, and that if he do not prove that ſuggeſtion by two honeſt ſubſtantial witneſſes in the ſame Court within ſix Months after the Prohibition granted and awarded, then the Party delayed ſhall have a Conſultation without delay, and double Coſts to be aſſeſſed by the Court, where the Conſultation is ſo granted, to be recovered in an Action of Debt, &c. wherein no eſſoine, &c. ſhall be allowed.* 2 E. 6. cap. 13. *Muſt produce a Copy of the Libel.* *Muſt prove the Suggeſtion within ſix Months.*

This clauſe of this Statute ſeems to give the Parſon, Vicar, &c. a double remedy where the ſuggeſtion is not proved within ſix Months, that is a conſultation, and ſecondly, double coſts; but in both theſe they are in ſome meaſure fruſtrated in their expectations, for as to the firſt, after ſuch conſultation a new prohibition may be obtained, and beſides, there are ſeveral caſes wherein the party cannot, or needs not prove his ſuccetſion not- *Obſervations upon this Clauſe.* Hoskins verſ. Stroade. T. 5. Car. ro. 988 B. R. Cockeram verſ. Davyes. Hill. 22. Jac. Pop. 159. Jones 231. Cro. Car. 308.

2 Inst. 662.

notwithstanding this Statute, as where the suggestion is in the negative, which regularly cannot be proved: secondly, if the suggestion be grounded upon any matter of Law, as in case the Suit be for things not Tithable, great Wood, things *fere naturæ*, &c. this appearing in the libel a prohibition lies, and there needs no proof of the suggestion.

2 Inst. 662.

To the second here is double costs to be awarded for want of proving the suggestion, and no execution given but an Action of debt to recover it, which is but a bad remedy in this case when the party shall only recover the costs, and have no costs allowed him in the second Suit.

So upon the whole matter here's a plausible clause in an Act of Parliament, and little benefit by it.

In what Case Prohibitions are Peremptory in themselves.

It is to be observed that some prohibitions are in themselves peremptory, as where there is a Suit in the Spiritual Court for things not Tithable, and appearing so in the Libel, in which cases a consultation shall never be granted; and so it is if the Suit be for carrying away Tithes after they are set forth, unless it be between Clergy Men in their own rights, and so it is where the matter is determinable at Common Law, and the same appearing in the Libel.

But

But where a *modus decimandi*, a Custom of not Tithing, a priviledg within the Statute of 32 *H.* 8. for Abbey Lands, and in such other cases where the suggestion is grounded upon matter of fact, which is doubtful to the Court, those prohibitions are not peremptory till the matter of fact be tried and found true by verdict. *Where* ex post facto.

The manner of proceeding in the obtaining, prosecuting and defending of prohibitions is in this manner. *How to prosecute and defend Prohibitions.*

The party that is sued in the Spiritual Court and desires a prohibition, moves the Court, and for the most part makes his suggestion *de novo* at Bar, if the suggestion be such upon which a prohibition cannot be denied, the Court usually gives rule that the party shall at a certain day come to shew cause why a prohibition should not be granted, and that in the interim proceedings in the Spiritual Court should be staid upon serving this rule in due time, and oath made of it if the Plaintiff in the Spiritual Court do not appear at the day and shew good cause to the contrary, the prohibition is awarded, and the rule made peremptory; but if the Court be doubtful whether the matter be sufficient to ground a prohibition or no, then, or at the prayer of the Defendant the Court will order the Plaintiff to draw up his suggestion into form, and then the Court

Court will conſider of the matter, or the Defendant may demur to it and the matter argued by learned Counſel, and then the Court as they ſee cauſe, will either award the prohibition, or diſcharge the rule. But if the matter ſuggeſted be a good ground for a prohibition, but is in it ſelf falſe or doubtful, the Defendant in the prohibition may demand a declaration of the Plaintiffs Attorny which is grounded upon a ſuppoſed attachment for not obeying the prohibition to which the Defendant may plead as Counſel ſhall adviſe him, and Traverſe, and put in iſſue the matter of the ſaid ſuggeſtion or ſuch other matter as Counſel ſhall adviſe which is to be tryed by a Jury of the Country; if it paſs with the Plaintiff, then is the prohibition become peremptory, but if the Verdict paſs for the Defendant regularly a conſultation is awarded that is, a Writ directed to the Judg of the Spiritual Court, authoriſing him to proceed notwithſtanding the prohibition.

Stat. 50 E. 3. cap. 4.

Where a Prohibition may be had after Conſultation.

Now by a Statute made in the 50 E. 3. it is enacted, That where a conſultation is once duly granted upon a prohibition made to the Judg of Holy Church, that the ſame Judg may proceed in the Cauſe by virtue of the ſame conſultation notwithſtanding any other prohibition thereupon to be delivered, provided always that the matter in the Libel of the ſaid

ſaid Cauſe be not ingroſſed, enlarged otherwiſe changed.

But this Statute has been ſeveral times held to extend to ſuch Cauſes only where conſultations are judicially granted upon examination of the Cauſe, and not where they paſs of courſe as for want of proof of a ſuggeſtion, or upon non ſuit for want of proſecution or ſuch like. Jones 231. Cro. Car. 208. Poph. 159, &c.

Sometimes the Court grants a conſultation *ſub modo*, as where the matter of the Libel is in the diſjunctive, and as to one part the Court has Juriſdiction, and to the other not, there the Court may grant a conſultation as to that part that the Spiritual Court has Juriſdiction of, and let the prohibition ſtand as to the other. Co. 5. 68. a. *. Co. 12. Rep. 44. *. *Conſultations ſub modo.*

Or a conſultation may be granted, ſo that the Spiritual Court allow ſuch plea, or ſuch proof. Sommers verſ. Sir Rich. Bulkeley. T. 32 El. B. R. Poph. 58.

Note that the ſix Months for the proof of the ſuggeſtion is according to the Kalender, and not twenty eight days to the Month. Hob. 179. *How the ſix Months to prove a Suggeſtion is to be accounted.*

And note in the caſes before put the prohibition ſhall be general and the conſultation ſpecial, *quoad*, &c. Co 5. 68. a. *. *Where no Conſultation ſhall be granted upon a Verdict for the Defendant.*

And it is taken for a rule in Sir *Henry Hobarts* reports, that if a prohibition be faulty, yet the Defendant ſhall never have a conſultation, if it appear to the Court that the ſuit in the Eccleſiaſtical Court was not well grounded. Hob 300. *. And

Dyer 171. p. 56. And therefore where one ſued for the Tithe Corn of ſixty Acres of Land, and the Defendant ſuggeſted, it was barren Ground, and paid no Tithes, and prayd and had a prohibition, and the Jury found that thirty Acres of it were ſo, and that the other thirty were barren, but had paid Tithe, Wool, and Lamb, and a conſultation denied becauſe it appeared the Plaintiff had no cauſe to ſue for Tithe Corn.

More 911 Auſten verſ. Pigot Cro. El. 756. So in a prohibition it was ſuggeſted, that the Perſon had twenty Acres of Land, and ten Acres of Wood in diſcharge of all Tithes, and the proof was that he had twenty Acres of Land only, and a conſultation denied, becauſe it appeared he had no cauſe of ſuit.

Prohibition after Sentence. Hob. 97. Noy 70. Winch 8. Cro. El 595. Regularly a prohibition ought not to be granted after ſentence, unleſs it appear the ſentence were obtained in the vacation, or by ſurpriſe, ſo that the party had not time to pray it ſooner, or upon matter ariſing after the ſentence, and the granting or not granting reſts much in the diſcretion of the Court.

Hob. 67. *After Conſultation.* And ſo ſometimes upon new matter ariſing after a conſultation a prohibition may be granted, notwithſtanding the aforeſaid Statute of 50 E. 3. as where the Spiritual Court after conſultation proceeds to try matter determinable only at Law, or if after a conſultation the Spiri-

Hob. 286. tual

tual Court will make an unjuſt decree as to award treble damages; and ſo in all caſes if the Spiritual Judg will proceed illegally, and againſt the Common Law, after conſultation a new prohibition may thereupon be obtained, but not upon any matter alledged in the Libel. Hughes 245. Hill. 11. Jac. C.B. Baldum verſ. Geery.

Prohibitions of themſelves are excellent things, where they are uſed upon juſt, legal, and true grounds, and have often avoided the uſurpations of the Popes and Spiritual Courts: but by the corruption of theſe later times they are grown very grievous to the Clergy, being too oft granted upon feigned and untrue ſuggeſtions, which it is impoſſible the Judges ſhould foreſee without the Spirit of Prophecy. And I think I may preſume to ſay that where one was granted before Queen *Elizabeths* time, there have been a hundred granted in this laſt Age; and they are a very great delay and charge to the Clergy; and it were well, in my poor Judgment, if the Reverend Judges would think of ſome way to reſtrain them, or to make them pay well for their delay by making the Plaintiff enter into recognizance, to pay ſuch coſts as the Court out of which they iſſue, ſhould award, in caſe they ſhould not prove their ſuggeſtion in convenient time, or ſome ſuch other courſe as they in their great wiſdom ſhall think juſt and meet. *The virtue and vices of Prohibitions.*

And

And so having done with the first manner of determining the right of Tithes at the Common Law. I shall proceed to the second, which is by Writ of Right of Advowson, to which likewise belongs the Writ of *Judicavit*, which in it self is no other but a meer prohibition to the Ecclesiastical Judg, and first of the *Judicavit*.

Judicavit *at Common Law.*

There have been some opinions that the Writ of *Judicavit* is grounded upon the Statute of *Circumspecte Agatis*, and *Articuli Cleri. cap.* 2. But it is very clear this Writ lay at Common Law; and it appears in our Books that it was the opinion of some learned Judges that it lay in all cases where the right of Patronage might come in dispute, and of this opinion Sir *Edward Coke* seems to be.

38 H 6.20.a. *per mod.* 4 E.3.27.b. *per Markham.* 2 Inst.364. *Lay for any Tithes.*

And *Bracton* a Learned Judg who wrote in the time of *H.* 3. hath the very Writ in his Book, which was long before the Statutes abovementioned; and he says that this Writ lies *si contentio fuerit inter Rectores de aliquibus decimis, quæ æstimari possunt usque ad quartam, quintam vel sextam partem advocationis. Et ultra quam partem non extenditur prohibitio, prout sibi videtur.*

Bracton l. 5. c. 4. 402. b.

For a Sixth Part.

But whatsoever the Common Law was, it is now setled by the Statute of *Circumspecte Agatis*, and *Articuli Cleri.*

cap.

cap. 2. That unleſs at leaſt the Tithes in demand be of the fourth part of the value of the Church, this Writ lyeth not, the Statute of *Articuli Cleri. cap.* 2. is, *ſi ſit contentio de jure decimarum originem habens de jure patronatus, & earundem decimarum quantitas aſcendat ad quartam partem bonorum Eccleſiæ, locum habeat Regis prohibitio*, that is to ſay a Writ of *Judicavit.* *Articuli Cleri* c. 2.

And this Writ lies as hath been ſaid where one Parſon demands Tithes againſt another Parſon to the fourth part of the value of the Church or more, which come into their Churches by ſeveral Patrons, for if the Incumbents come in both by one Patron the right of the Advowſon cannot come in queſtion, and by conſequence this Writ lies not. 2 Inſt. 491. *Where the* Judicavit *lyes.*

And it is to be obſerved that this Writ doth not lye before Libel, nor after definitive ſentence, for the party that prays this Writ muſt ſhew a Copy of the Libel in the Court of Chancery before he can have it. F.N.B. 45. b. c. 12 E. 4. 13. *When.*

And though the Law be reſtrained at this day to a fourth part of the value of the Church, where before it was at large. Yet the form of the Writ remains, and if the thing in demand be under the fourth part of the value, it muſt be ſhewed in pleading by the other ſide. 2 Inſt. 364. *The Form of the Writ not altered by the Statutes.*

F.N.B.45.b. *Lyes of Offerings.*

And this Writ lyes as well for offerings, as for Tithes: When such Writ is sued and served, and the proceeding in the Spiritual Court stopt, then the Plaintiff there is to sue his Writ of right of Advowson of such a portion of Tithes as the case requires, and this is given by the Statute of *West.2.* Westm.2.c.5. *cap.* 5. in these words, *Et cum per breve de Judicavit impeditur Rector alicujus Ecclesiæ ad petendas decimas in vicina parochia, habeat patronus Rectoris sic impedito breve ad petendam advocationem decimarum petitarum:* but this must be intended where the Patron has the Fee-simple of the Advowson. And the *Judicavit* is to be brought in the name of the Patron and his Clerk against the other Incumbent that sues in the Ecclesiastical Court and his Patron; but the Writ of right of Advowson is to be sued by the one Patron against the other, and the Patron demandant shall alledg examples taken by his Incumbent of great and small Tithes.

By whom.

F.N.B.45.b. *But where the same Person is Patron and Incumbent,* su. solem. 12 E.4 13.b.7.

F.N.B.30.b. *The relief of Tenant in tail, Purveyance,* &c. 2 Inst.364.

But if the Patron against whom the *Judicavit* is sued, be but Tenant in Tail, Tenant for Life or Years, then he cannot maintain a Writ of right, but must demand and appear to a Declaration, upon an attachment, and plead his Title, which must be proceeded in, as in other prohibitions; and when the Title of the Patronage is determined at Common Law, then the cause must be remitted to the Eccle-

Eccleſiaſtical Court, where Sentence muſt be given according as the Law has determined the Right, and this appears by the Form of the *Judicavit*, which is ſpecial, *Vobis præcipimus ne placitum illud teneatis, donec diſcuſſum fuerit in Curia noſtra ad quem illorum pertinet ejuſdem Eccleſiæ advocatio.* *The Proceeding remitted.* Regiſt. 36. a. & 35. b.

And there is a note in the Regiſter, that this Writ lyes of a Vicarage, Prebend. *& aliis ſimilibus* as well as of a Rectory, and the Form of the Writ is thus, *Præcipe* A. *quod reddat* B. *advocationem decimarum quarta partis vel medietatis Eccleſiæ*, &c. F. N. B. 30. E.

But theſe Writs as well as other real Actions, are grown obſolete and ſeldom put in practice, and therefore thus much ſhall ſuffice of the nature and proceeding in them.

The third manner of proceeding for the determining the Right of Tithes at Common Law was by *Seire facias*, which was grounded either upon Letters Patents, Fines, or other Judicial Records, of which Mr. *Selden* inſtances ſeveral Preſidents; but this manner of Trial being taken away by the *Stat.* of 18 E. 3. c. 7. I ſhall ſay no more of it. *Seire facias.* 18 E. 3. c. 7. Seldens hiſt. decim. 439. *&c.* Co. Inſt. 2. 640. 2 Inſt. 640; *&c.*

The fourth ſort of determining the Right of Tithes at Common Law, mentioned by Mr. *Selden*, is Writs Mandatory, commanding the payment thereof, *Writs mandatory.*

whereof he gives some few Instances, but these having never been frequent, and for long time discontinued and grown out of use, I will not trouble the Reader with them, but refer the curious Reader to Mr. *Seldens* History of Tithes, and proceed to the fifth manner of determining the Right of Tithes at the Common Law, which is grounded upon the late Statutes.

Selden 444. &c.

For the Statute of 27 *H.* 8. there hath been sufficient said already; for that of 32 *H.* 8. that concerns the Temporal Jurisdiction I shall leave till the last, and proceed to shew what Authority is given to the Temporal Courts by the Statute of 2 *E.6. cap.* 13. being the first Law that ever gave the Temporal Courts Jurisdiction for the Parson against the Parishioners for Subtraction of Tithes, in which there is a Clause to this effect.

2 E. 6. c. 13.

Treble Value. And it is enacted by that Statute after it has confirmed the former Statutes of 27 *H.* 8. *c.* 20. and 32 *H.* 8. *c.* 7. *That every of the Kings Subjects should from thenceforth truly and justly without fraud or guile set out, yield and pay all manner of their predial Tithes in their proper kinds, as they arise and happen in such manner and form as hath been of Right yielded and paid within forty years next before,* &c. *or of Right or Custom ought to have been paid,*

paid, and that no perſon thenceforth ſhould take or carry away ſuch or like Tithes, which had been yielded or paid within the ſaid forty years, or of right ought to have been paid in the place or places Tithable of the ſame, before he hath juſtly divided or ſet forth for the Tithes thereof, the tenth part of the ſame, or otherwiſe agreed for the ſame Tithes with the Parſon, &c. under the pain of the forfeiture of the treble value of the Tithes ſo taken and carried away.

This Clauſe being compared with the former Clauſe, almoſt penned in the ſame words for the double value, would make a man at a ſtand what the meaning of the Parliament was, and it was forty years (when almoſt all that were at the making of this Act were dead) before it was found out, that an Action of Debt lay upon this Clauſe at Common Law for the treble damages: To wit *Paſch. 29. Eliz.* In the Exchequer in an Information by the Queens Attorney againſt one *Wood* for the treble value, as forfeited to the Queen. In which Cauſe it was reſolved, that an Action of Debt lay at the Common Law for the treble damage, for not ſetting forth of Tithes; for whereſoever an Act of Parliament gives a forfeiture againſt him, that doth diſpoſſeſs, &c. the Owner of his property, as here he doth of his Tithes, there the forfeiture is given to the Party grieved or diſpoſſeſſed, 2 Inſt. 650.

since which resolution Actions of Debt have been frequently brought in all the Courts of *Westminster* by Parsons, Vicars, Propriators, Owners and Farmers of Tithes, as well Lay as Spiritual upon this Statute, but being so long before it was found out, that an Action lay at Common Law upon this Statute, the Plaintiffs in the recital of the Statute alledged it to be made the fourth of *February* 2 *E.* 6. whereas in truth the Parliament begun the 1 of *E.* 6. and was held by Prorogation the fourth of *February* 2 *E.* 6. And this being discovered in an Action between *Oliver* and *Collier*. 8. *E.* 6. *Jac. B. R.* brought upon this Statute, wherein the Statute was mistecited as aforesaid, and exception taken to it in arrest of Judgment, the Court upon good advisement overruled the exception by reason of the multitude of Presidents, and affirmed the Rule that *multitudo errantium parit erroris Patrocinium.*

1 Brownlow. 100. Yelver. 126. Dyer 171. p. 6. Stile 122.

Now considering, that this is become a very frequent Action in use, I conceive it will not be improper to the present occasion to communicate to the Reader, what I have observed and learned in this kind of Actions, not only concerning the Forms of Declarations, Pleadings, Verdicts and Judgments, but likewise what evidence is necessary upon the general Issues of *non culpa* and *nil debet*, for the Plaintiff

tiff and Defendant, and in the first Case consider in what Cases, and by whom, and against whom this Action may be brought.

If two be Joynt Tenants, and they enter and occupy jointly, the Action must be brought against them joyntly, but if one only enter and occupie them, the Action must be brought against him, that only occupies alone. Hutton 121. 122. *By whom, and against whom, Actions lye in this Statute.*

But if there be two Tenants in Common, and one of them sets out his Tithe, and the other carries it all away, there the Action shall be brought against him, that carries it all away alone.

If the Husband and Wife in the right of the Wife be intitled to Tithes, they shall joyn in this Action, because the damage is to survive, but a Parson and a Vicar cannot joyn, but if they joyn in a Lease to a third person, their Farmer may sue for all in one Action; but in the first Case, I see no reason but that the Husband may bring the Action alone, and so I have known it often done. Noy 3. 136. 1 Brown. 86. Yelv. 63. Cro. Jac. 68.

In an Action brought upon this Statute, the Severance was alledged before the sowing, and exception taken after Verdict; but the Exception was disallowed, because the shewing of the sowing was superfluous, and so aided by the Verdict. *The Form of the Declar.* Bellet vers. Henworth P. 1657 B. R.

Cro. Car. 324. The taking was alledged after the Plaintiffs Term was ended, and yet held good.

More 911. *M.* 40, *and* 41 *Eliz.* A Judgment was arreſted, becauſe the Suit was brought *ad reſpondend. tam Domino Regi quam Parti*, but this Caſe I very much doubt, for being againſt a Statute Law it is a contempt finable, though the Plaintiff have the forfeit, as upon the Statute of Huy and Hetley 121. Cry, &c. And I take the Caſe *inter Lu-vered* and *Owen. M.* 4. *Jac. C. B.* for the better Law, where it was held good.

Cro. El. 170. Upon an Action brought by two upon this Statute, who made their Title by a Leaſe from a Patentee of the King, and exception was taken, becauſe they did not ſhew the Patent, but diſallowed. 1. Becauſe the Letters Patents did not belong to the Plaintiffs. 2. Becauſe the Plaintiffs did not demand the Tithes themſelves, but damages for a tort; another Exception was taken to the Declaration, becauſe the Plaintiff alledged the Defendant did not agree with them, and did not ſay, or either of them, but held good by Intendment.

2 Bulſt. 65. 228. 183. 1 Brown. 86. Noy 3. Yelv. 63. Cro. Jac. 68 361. And it hath been adjudged, that in this Action, the Plaintiff needs not to ſhew his Title eſpecially, but it is enough for him to alledg that he is Propriator, Farmer or Rector, generally without ſhewing how.

And

And it hath been held good, though the Plaintiff in his Declaration do not expreſs the quantities or loads of the Corn or Hay carried away. 2 Brown. 70, 71.

And ſo it is, though you do not expreſs in your Declaration, the kinds of the Grain carried away. 2 Inſt. 650.

Where a man alledged, that he was Farmer of all the Tithe Corn ariſing, &c. upon ſixty Acres of Land in *D.* and did not alledg which they were in certain, and yet allowed for good. 2. The Plaintiff alledged the Defendants Occupiers, but did not ſay, whether joyntly or in common, and yet held good. 3. The Plaintiff had alledged no time of the carrying away, but having alledged the time of the ſeverance, and the carrying away, coming in with a Conjunction Copulative it was held well enough. Coke verſ. Smith H. 7. Car. 1. ro 387. B. R. per Lat.

In an Action brought upon this Statute, the Plaintiff averred in his Declaration, that he was *ſubditus dicti Domini Regis*, having recited the Statute, and it was held nought, becauſe it muſt neceſſarily be intended *E.* 6. and not of the preſent King. Cro. Jac. 324. 2 Bulſt. 114.

In an Action upon this *Stat.* the Defendant pleaded a Recovery in the Eccleſiaſtical Court; but it was held no good Plea at Common Law, but I conceive it would be a good evidence upon *nil debet* pleaded, otherwiſe the Pariſhioner were in an ill Condition. *Pleas in this Action.* Porter verſ. Rocheſter Hill. 9 Jac. B. R.

In

Wortley vers. Empringham. P. 42. El. B. R. Hob. 218. Cro. El. 766. Cro. Jac. 361.

In this Action *non culpa* and *nil debet* have been both held good Issues, but it is no good Plea to plead, that the Plaintiff sowed the Corn, and sold it to the Defendant, because this matter will not excuse the payment of Tithes.

Now having brought the cause to issue upon *nil debet* or *non culpa*, we will shew in the next place what will be good and material evidence, as well for the Plaintiff as Defendant.

What Evidence is necessary in this Action. ex parte quere.

First, If the Plaintiff be a Parson, Vicar or other Ecclesiastick, and have not been some considerable time in possession of his Living, in which I have not observed any constant rule amongst the Judges in their practice, but ten years quiet possession for the most part is allowed by the Judges for an evidence of the Plaintiffs Title, unless some material objection be made against it to draw it into question, but if the Plaintiff have been but for some short time in possession, or the possession litigious, then the Judges usually put the Plaintiff to prove his institution and induction, and now he must prove that he was in Episcopal Orders at the time of his institution, otherwise his institution is void by the late Act of Uniformity, he must produce a Certificate under the Hand and Seal of the Bishop, &c. that instituted him, that he subscribed the declaration mentioned in the Act of

of Uniformity, and muſt prove he ſubſcribed the ſame in the preſence of the Biſhop, or, &c. and he muſt prove that within two Months after he was inducted, upon ſome Sunday or Lords day during Divine Service, he read the thirty nine Articles of Religion in the Pariſh Church into which he was inducted, and that he did declare his unfeigned aſſent and conſent to all things therein contained, and he muſt likewiſe prove that within two Months after actual poſſeſſion of his Living he read Morning and Evening Prayer in his Church upon ſome Lords day, and openly and publickly before the congregation declared his aſſent and conſent to the uſe of all things therein contained and preſcribed in theſe words, *I A. B. do here declare my unfeigned aſſent and conſent, to all and every thing contained and preſcribed in and by the Book Intitled the Book of Common Prayer and Adminiſtration of the Sacraments, and other Rites and Ceremonies of the Church, according to the uſe of the Church of* England, *together with the Pſalter or Pſalms of David pointed as they are to be ſung or ſaid in Churches, and the form or manner of making, or Ordaining, and Conſecrating Biſhops, Prieſts and Deacons.*

The Parſon, Vicar, &c. having thus made himſelf a Title, muſt proceed to prove the taking and carrying away the

the Corn, Hay, &c. and the value; and if need be that the Land lies within the Parish, &c. but this the Judges put them to prove, first of all commonly.

But if the Plaintiff be a Farmer or Patentee under the Crown he must prove his Title, but if he have been any considerable time in possession, and the Title not controverted, the Judges seldom put the Plaintiff to shew any more Title but his bare possession and enjoyment, and that others pay him Tithes.

And so having shewed what is necessary the Plaintiff should be prepared to prove, I will proceed to shew what defence the Defendant may make.

Ex Parte Defendentis.

The Defendant upon the general issue of not guilty, &c. may prove that he

Brown. 1. 34.

duly set forth his Tithes, but if he afterwards carried them away it will not serve his turn; so if he sell his Corn privately to another, and after he has sold it pri-

2 Inst. 649.

vately, cuts and carries it away; the Action lies against the first Owner; the same Law is, where the Owner of the Land privately sells his Corn to another who privately cuts and carries it away.

And the Defendant may prove that another has a better Title to whom he has paid his Tithes, or compounded with him for them.

Or

Or he may prove that the Parſon came in by Simony, or any other matter that makes his preſentation, inſtitution, or induction void, or any other defect in not reading the Articles, &c.

Or he may prove that he ſet forth his Tithes, and a Stranger carried them away, or may give in evidence, a Leaſe or Grant from the Plaintiff himſelf, or any other to whom he can make a good Title, but ſuch Leaſes and Grants muſt be in writing, unleſs for one year only, to the Owner of the Land, which hath been held good by way of retainer.

The Jury, if they find for the Plaintiff, are to find how much of the debt demanded by the declaration is due to the Plaintiff, which they are to do by trebling the value of the Tithe ſubtracted wherein they are uſually aſſiſted by the Court. *Verdict.*

The judgment is always given for the debt found by the Jury without coſts, becauſe this Action is grounded upon a penal Law, where no Action lay at Common Law, neither ſhall the Defendant have any coſts, if the Verdict paſs for him; but if judgment be given for the Plaintiff in an Action brought upon this Statute by *nihil dicit*, *non ſum informatus*, or demurrer, the Plaintiff ſhall have Judgment for the whole debt demanded by his declaration. And if an Action upon this *Judgment.* Cro. Jac. 361, 362.

this Statute be brought against two or more, and Verdict only pass against one, or part of the Defendants, the Plaintiff shall have Judgment against those against whom the Verdict passes, though the others be acquitted, *quod nota.*

Stiles 317, 318.

Nota. Note that this Statute as to the treble value and double value extends only to Predial Tithes, and not to Personal, mixt, or other Church duties.

Jurisdiction of the Exchequer. The Exchequer likewise by *English* bill holds plea for the single value, for subtraction of all manner of Tithes, Oblations, *&c.* of which great use hath been made since the late Wars, and there they decree the single value with costs, and the future payment, which is of great advantage to the Plaintiffs, and these suits are not interrupted with prohibitions; but these suits are often very costly too, for if a *modus decimandi*, or the bounds of the Parish come in question, and the proof not very clear, they are frequently sent to Trials at Law, which gives delay and increases the charges very much, this Jurisdiction I take it is much fortified since Tenths and first-fruits were annexed to the Crown, but Suits of this nature were early brought in this Court before the War, however there are some antient Books prove that this Court on the Law side has assumed Jurisdiction of Tithes, but the reporter reports it with a *quod mirum.*

38 Ass. p. 20.
44 E. 3. 43, 44.

Lastly,

Laſtly, it is evident in our Books of Law, that the rights of Tithes were frequently determined at Common Law in Actions of Treſpaſs for taking away of Tithes, unleſs both parties were Clergymen; and ſometimes Aſſiſes have been brought at Common Law for Tithes between lay Perſons. And it is held in the 25 *H.* 8. that where the Lord of a Manor claimed Tithes in conſideration of finding a Chaplain at ſuch a Chappel, and the Pariſhioners claimed them likewiſe upon the ſame conſideration, that the right of theſe Tithes being between Lay Perſons was triable at Common Law only.

50 E. 3. 20. 2 H. 4. 15. 20 H. 6. 17. 1 H. 6. 5. 2 E. 4. 5. 44 Aſſ. p. 25. 25 H. 8. Br. *Juriſdiction* 95.

And by the Statute of 32 *H.* 8. it is enacted, that in all caſes where any Perſon, *&c.* which then had, or then after ſhould have any Eſtate of Inheritance, Free-hold, *&c.* in or to any Parſonage, Vicarage, Portion, Penſion, Tithes, Oblations, and which then were, or then after ſhould be made Temporal, or admitted to be, abide, and go to, or in temporal hands, and Lay uſes, and profits by the Law, *&c.* ſhould then after fortune to be diſſeiſed, deforced, wronged, or otherwiſe kept or put out from their Lawful Inheritance, Eſtate, Seiſine, Poſſeſſion, Occupation, Term, Right or Intereſt, of, in, or to the ſame, or, *&c.* by any other Perſon, or, *&c.* claiming

Stat. 32. H. 8. cap. 7.

or

or pretending to have Intereſt or Title to the ſame, that then, and in every ſuch caſe, &c. the Perſon, &c. ſo diſſeiſed, &c. the Heirs, Wives, &c. ſhall and may have their remedy in the Kings Temporal Courts, or other Temporal Courts as the Caſe ſhall require for the recovering, &c. ſuch inheritance, &c. by Writs Original of *quod ei deferat præcipe quod reddat*, *Aſſiſe*, &c. as the Caſe ſhall require, &c. So that ſince this Statute the Caſe is put out of all doubt, that for ſuch Tithes, &c. which are become Layfee, the right, Title and poſſeſſion is become determinable at the Common Law, and all manner of real Actions, Ejectments and other perſonal Actions are brought of them, as the Caſe requires daily.

Concluſion. And now having ſhewed in how many Courts, and how many ways Tithes may be recovered, it calls to my mind the Fable of the Fox and the Cat who had but one way to ſhift for her ſelf when the Hunts men came, but that one proved better and more ſecure than all the ſhifts the Fox had boaſted of; for upon the whole matter it were much better for the Reverend Clergy if they had one ready way to recover ſingle damages with their coſts of Suits at Common Law where they might not be interrupted by Prohibitions, and claſhing of Juriſdictions, and

toſt

toſt from one Court to another, than all theſe ways I have mentioned. And it is a wonder to me that there being hardly a Lord in Parliament, nor many of the Houſe of Commons that have not ſome part of their Eſtates in impropriations, though they had no kindneſs to the Church, yet for their own intereſt and concerns have not to that purpoſe preferred ſome Law in Parliament before this time which might be done in a few lines by giving an Action of the Caſe at Common Law for the ſubtraction of Tithes with coſts, or if the Parliament ſhould think fit the ſmaller ſort of Tithes might be determined in a Summary way by the Juſtices of Peace with an appeal to the Judges of Aſſiſe, but this I humbly ſubmit as I do all the reſt to better Judgments.

The concluſion of the whole.

I have now finiſhed this ſmall Tract whereby I wiſh the Reverend Clergy may receive as much ſatisfaction as I deſire, or they can expect. And I ſhall now conclude all with a Liſt of thoſe Monaſteries, the Lands of which are only capable to be diſcharged of the payment of Tithes, by Order, Bull, Preſcription, real compoſition or otherwiſe, that every Clergy man may ſatisfy himſelf without further enquiry whether ſuch Monaſtery Lands as ſhall happen to be in his Pariſh, *&c.* may have the benefit of the Statute of 31

H. 8. to be freed of the payment of Tithes, and in the List following I have set down the times of the foundations of the several Monasteries, that being material to know, for if they were founded since the first year of *R.* 1. they cannot prescribe in *non decimando*. I have also for the most part set down what order the Houses were of, that the Reader may satisfy himself whether they were of any of those Orders that were priviledged from the payment of Tithes for the valuations I have followed Mr. *Dugdale*, as being a sure Author, having observed many Errors in that of Mr. *Speed*.

In the perusal of this Catalogue you will find how many Foundations were made of Monasteries in the first Century after the Conquest, and till the Raign of King *John*, that if they had continued at that rate, the greatest part, if not all the Land in *England*, had by this day been Monastery Land, but in King *John's* time they begun to slack, and in the ninth of *H.* 3. the Statute of Mortmain was made, after which you will find but few Religious Houses (as they were called) founded.

Magna Charta.

The *Cistertian* order came into *England* about the year of our Lord 1128. and in the ensuing Table, you may see how well they prospered, that in so short a time there should be so many of the greater Abbies of that order.

The

The black Canons regular of *St. Auguſtine* firſt came into *England* as Mr. *Stow* ſays in the Year 1108. and were firſt placed in Trinity Church within *Algate London*, but I rather think he is miſtaken in the time, for I find ſome Monaſteries of that order before that time, however the enſuing Catalogue will inform you of their increaſe. Stows *Survey of* London. 930.

And it is without diſpute that the increaſe of Monaſteries, eſpecially thoſe of priviledged Orders, tended very much to the prejudice of the Secular Clergy that had the Cure of Souls; for beſide the orders that were priviledged they appropriated all the Churches, they could obtain, and how ill they were ſerved a Man may in ſome meaſure obſerve that peruſes the Statute of 15 *R.* 2. and 4 *H.* 4. for it appears by them that they endowed no Vicarage at all upon the appropriating Churches, or ſo meanly, that the Vicars could not live upon them, and not at all Hoſpitality practiſed. And therefore the Parliament of *England* which has always put a ſtop to the uſurpations and exorbitances of *Rome*, and to prevent the Religious Houſes, deſtroying the Church in the 15. Year of the Raign of King *Richard* the ſecond made a Law, *that the Dioceſan of the place where any Church was to be appropriated, ſhould take care the Vicarage ſhould be well and ſufficiently endowed* *Endowment of Vicarages.* 15 R. 2. cap. 6.

dowed beſides a Portion to the poor. But this Act not having the effect was deſired and expected, the Biſhops of thoſe times being overawed by his Holineſſes mandates, or partieipating too much of his qualities, a ſecond good Act was made in the 14. Year of King H. 4. *whereby it was enacted, that all thoſe appropriations that were made ſince the former Statute without ſuch endowments, were declared to be void. And that no Religious Perſon (that is, Monks and Fryers) ſhould be made Vicar in any Church appropriated, or to be appropriated by any means in time to come, and that no Vicarage ſhould be appropriated by theſe Statutes, and divers other Statutes cited in this work upon ſeveral occaſions.* It is eaſy to gueſs what opinion they had, even in the times of Popery, of theſe People called Religious Men.

4 H. 4. cap. 12.

I have now made too long a digreſſion. And will therefore proceed to the Catalogue I promiſed the Reader.

Here

Here follows a Catalogue of the ſeveral Monaſteries, that upon the general Survey taken in the 26*th.* year of *H.*8. were returned to be of the annual value of 200 *l. per an.* and upwards within *England* and *Wales*, and by conſequence diſſolved by the Statute of 31 *H.*8. *cap.* and by that means are capable of being diſcharged of the payment of Tithes, with the date of their Foundations, as near as I can compute, with what Orders they were of; In which obſerve, that *A.* ſtands for *Abbey*, *P.* for *Priory*, *Ben.* for *Benedictins*, *Ciſt.* for *Ciſtertians*, *Præm.* for *Præmonſtratenſes*, *Car.* for *Carthuſians*, *C. S. A.* for *Canons of St. Auſtin*, *F.* for *Founded*, *T.* for *Tempore*, and in the valuations I have rejected all *ob.* and *q.*

Berks.	*l.*	*s.*	*d.*
Reading Ben. F. T. H. 1.	1938	14	3
Buſleſham A. C. S A. F. 13 *E.* 3.	0285	0	0
Abington A. Ben. F. 720.	1876	10	9
Bedford.			
Newnham P. C. S. A. T. H. 1.	0293	5	11
Elmeſtow A. Ben. F. T. W. Conqueſt.	0284	12	11
Warden A. Ciſt. F. 4. *Steph.* 1138.	0389	16	6

	l.	s.	d.
Chichsand P. White C. Gibertines F. T. W. Ruf.	0212	3	5
Dunstable A.C.S.A.F.T.H.1.	0344	13	3
Wooburn A.Cist. F.T. Johannis Regis	0391	18	2
Bucks.			
Ashrugge Coll. C.S.A. F.T.E.1.	0416	16	4
Noteley A.C.S.A. F.T.H.1.1112.	0437	6	8
Missenden A.Ben.F.1293:	0261	14	6
Cantabr.			
Thorney A.Ben.F.972.	0411	12	11
Barnwel P.C.S.A. F.T.H.1. 1092.	0256	11	10
Cestr.			
S.Werburge A.Ben.F.1095.	1003	5	11
Combermeere A.Cist. F.1134.	0225	9	7
Cornub.			
Bodhim P. C.S. A. F.936.	0270	0	11
Launceston A. C.S.A. T.W. Conquest.	0354	0	11
St.Germans A.C.S.A. F.T. Esbelstani Regis.	0243	8	0
Cumbr.			
Carliſle P. C.S.A. F.T.W.Ruf.	0418	3	4
Holmcoltrom A.Cist.F.1135.	0427	19	3
Derb.			
Darley A. C.S.A. F.T.H.2.	0258	14	5
Devon.			
Ford A.Cist.F.1133.	0374	10	6
Newham A.Cist.F.circa 1246.	0227	7	8
Dinkeswel A.Cist.F.1201.	0294	18	6
Hertland A. C.S.A. F.T.H.2.	0306	3	2
Torre A.Prem.F.T.R.1.	0396	0	11
Buckfast A.Cist. F.T.H.2.	0466	11	2
Plimpton A.Cist.F.T.E.1.	0241	17	9
Tavestock A.Ben.F.961.	0902	5	7

	l.	s.	d.
Exon P.Cluna F.T.H.1.	0502	12	9
Dorset.			
Abbotsbury Ben.F.circa 1016.	0390	19	2
Midleton A.Ben. F.per R.Ethelstan	0578	13	11
Tarrent A.Cist. F.per H.3.	0214	7	9
Shafton A.Ben.F.941	1166	8	9
Cerne A.Ben.F.T.R.Edgari	0515	17	10
Sherborne A.Ben.F.circa 370	0682	14	7
Dunelm.			
St.Cuthbert A.Ben.F.circa 842	1366	10	9
Tinmouth P.Ben.F.	0397	11	5
Essex.			
Berking A.Ben. F.680.	0862	12	5
Stratford Langthorne A.Cist.F.1135.	0511	16	3
Waltham A.C.S.A. F.circa 1060.	0900	4	3
Walden A.Ben.F.1136.	0372	18	1
St.Oswith A.C.S.A.F.1120.	0677	1	2
Colchester A. C.S.A.T.H.1.	0523	17	0
Glouc.			
Bristol A.C.S.A. F.circa T.H.1.	0670	13	11
Haylet A.Cist.F.1246.	0357	7	8
Winchcomb A.Ben. F.787.	0759	11	9
Tewesbury A.Ben.F.715.	1598	1	3
Cirencester A.C.S.A. F.T.H.1.	1051	7	1
Kingswood A.Cist.F.1139.	0244	11	2
Gloucester A.Ben.F.680	1946	5	9
Lanthony P.juxta Glouc.C.S.A.F.1136.	0648	19	11
Hants.			
St.Swithins Winton A. Ben.F.634	1507	17	2
Hyde Abb.Ben.F.per Regem Elfred.	0865	18	0
Wherwel A.Ben.F.T.Edgari Reg.	0339	8	7
Romsey moniales Ben.F.907.	0393	10	10

	l.	s.	d.
Twinham P.C.S.A. F.ante 1042.	0312	7	0
Bello loco A. Cist.F. 1204.	0326	13	2
Southwick P.C.S.A.F.T.H.1.	0257	4	4
Tichfeild A.Præm.F.T.H.3.	0249	16	1
Hertford.			
St.Albans A.Ben.F.755.	2102	7	1
Hunts.			
St.Neats A.Ben.F.circa T. H.1.	0241	11	4
Ramsey A.Ben.F.969.	1716	12	4
Kanc.			
St.Austins prope Cant.A.Ben.F.605.	1413	4	11
Ledis P.C.S.A.F.1119.	0362	7	7
Feversham A.Clun.F.1147.per R.Steph.	0286	12	6
Boxley A.Cist.F.1144.	0204	4	11
Roffen A.Ben.F.600.	0486	11	5
Mallinge A.Ben.per Regem Edm.	0218	4	2
Dertford A.C.S.A.F.46 E.3.per ipſ.R.	0380	0	0
Lanc.			
Whalley A.Cist.F.1172.	0321	9	1
Leic.			
Leiceſtr.Ab.C.S.A.F.1143.	0951	14	5
Croxden A.Præm.F.circa T.R.1.Reg.	0385	0	10
Launda A.C.S.A.F.T.W.Ruf.	0399	3	3
Lincoln.			
Lincolne St.Cath.P.Gilbert F.T.H.2.	0202	5	0
Kirkſteed A.Cist.F.1139.	0286	2	7
Reveſly A.Cist.F.1142.	0287	2	4
Thornton A.C.S.A.F.1139.	0594	17	10
Bardney A.Ben.F.712.	0366	6	1
Croyland A.Ben.T.Reg.Ethelred.716.	1803	15	10
Spalding. A.Ben.F. 1052.	0761	8	11
*Sempringham A.Gilbert f.*1148.14.*Steph.*	0317	4	1

Epworth

	l.	s.	d.
Epworth moniales Carthuſ. 10.R.2. fundat.	0237	15	2
Lond. and Midd.			
St. John Jeruſal. P.F.T.H.1.1100.	2385	12	8
St. Barthol. Smithfield C.S.A. f.1102.	0653	15	0
St. Mary Biſhopsgate Prf. 1187.9 R.1.	0478	6	6
Clerkenwel P. Ben.F.T.Reg.Steph.	0262	19	0
London Minors Ben. T.F.E.1.	0318	8	5
Weſtminſter A.Ben.F.T.Reg.Edgari	3471	0	2
Sion A.C.S.A.F.per Reg.H.5.	1731	8	4
London domus Cart.fundat.T.E.3.Reg.	0642	0	4
S.Clare extra Algate monial. F.1292.	0418	8	5
S.Mary Charter-houſe Carth.f.1371.	0736	2	7
S.Johns Holywell monial. nigr.f.1318.	0347	1	3
S. Mary Eaſt-Smithfield. A. Ciſt. F. 34.E.3.	0602	11	10
Northfol.			
Thetford Ab.Clun.F.1103.	0312	14	4
Wymundham A.Ben.f.1139.	0211	16	6
Hulmo A.Ben.F.per Canutum Reg.	0583	17	0
Weſtdreham A.Prem.F.T.H.2.	0228	0	0
Walſingham A.C.S.A.F.circa T.Steph.R.	0391	11	7
Caſtle Acre A.Clun.F. 1090.	0306	11	4
Weſtacre A.Clun.F.T.W.Ruf.	0260	13	7
Northon.			
Burgi S.Petri A.Ben.F.per rofere R.Mer.	1721	14	0
Pipewell A.Ciſt.F.1143.	0286	11	8
S.Andreas P.Clun.F.1067.	0263	7	1
Sulby A.Præm.F.T.Steph.Reg.	0258	8	5
Notts.			
Lenton P.Clun.fund.T.H.1.	0329	5	10
Thurgarton P.C.S.A. F.T.H.1.	0259	9	4

	l.	s.	d.
Welbeck A.C.S.A.F.T.Reg.Steph.	0249	6	3
Warsop P.C.S.A.fundat.	0239	10	5
Bella Valla Pri.Carth.F.circa. 16 E.3.	0227	8	0
Newsteed P.C.S.A.F.T.E.3.	0219	18	8
These two last are under value in Mr. *Dugdale*, but thus *per Speed.*			
Northumbr.			
Tinmouth a Cell to St. Albans a Nunnery.	0511	4	1
Oxon.			
Godstow A.Ben.F.T.Step.Reg.	0274	5	10
Eynesham A.Ben. F.T. Etheldred Reg.	0441	12	2
Osney A.C.S.A.F.T.H.1.	0654	10	2
Thame A.Cist. F.T.H.1.per Speed.	0256	13	11
Oxford P.per Speed fund.ante Conq.	0224	4	8
Dorchester per eundem A.C.S.A. F.635.	0219	12	0
Salop.			
Haghmond A.C.S.A. F.1100.	0259	13	7
Lilleshul A. C.S.A.F. per Adelfleda R. Mercia.	0229	3	1
Wigmore A.C.S.A. F.1172. per Speed.	0267	2	10
Wenlock P.clun.F.1181.vel antea.	0401	0	7
Salop A.C.S.A.F.1081.per Speed.	0615	4	3
Hales Owen A.Prem.fund.T.R. Joh.	0337	15	6
Somerset.			
Glassenbury A.Ben. circa 300 *F.*	3311	7	4
Brewton A.C.S.A.F.T. Conquest.	0439	6	8
Henton P.Carth.F.T.H.3.	0248	19	2
Witham P.Cart.F.per H.2.	0215	15	0
Taunton P.C.S.A. T.H.1.	0286	8	10
Batbon A.Ben.fund.T.H.3.	0617	2	3
Keynesham A.C.S.A.F.T.H.1.	0419	14	3
Michelney A.Ben.F.740.	0447	4	11

	l.	s.	d.
Buckland P.Cist.F.T.E.1.	0223	7	4
Staff.			
De la cres A.Cister.F.1153.	0227	5	0
Burton sup. Trent.A.Ben.F.T.Eadredi R.	0161	14	3
Croxden A.Cist,cont.Fundat.			
Suffolk.			
S.Edmundi Bury.A.Ben.F.1020.	1659	13	11
Butley A.C.S.A. F.1171.	0318	17	2
Sibeton A.Cist.F.1150.	0250	15	7
Ixworth P.C.S.A. F.T.Conq.	0280	9	5
Surry.			
Merton P.C.S.A.F.1121.T.H.1.	0957	19	5
Shene P.Carth.F.1414.	0777	12	0
Chertsey A.Ben.F.666.	0659	15	8
Newark P.	0258	11	11
S.Maries Overs. A.C.S.A.F.7 H.1.	0624	6	6
Bermundsey A.C.S.A. F.7.H.1.	0474	14	4
Warw.			
Combe A.Cist.F.T. Steph.R.	0311	15	1
Kenelworth A.C.S.A.F.T.H.1.	0538	19	0
Meryval A. Cist. F.1148.	0254	1	8
Nuneaton monial. Ben.F.T.H.2.	0253	14	5
Wilts.			
Malmesbury A.Ben.F. circa 670.	0803	17	7
Bradenstock P.C.S.A. F.T.Conq.	0212	19	3
Edington P.C.S.A. F. 1352.	0442	9	7
Ambresbury A.Ben.F.1177.	0494	15	2
Wilton A.Ben.F.T.Ethelwolphi R.	0601	1	1
Farcley a Cell to Lewes per Speed f. 1125. clun.	0217	0	4
Lacok A.C.S.A.F.1232.per Speed.	0203	12	3

Wigorn.	l.	s.	d.
Malverne A.Ben. F.1083.	0308	1	5
Evesham A.Ben.T.Offa.	1183	12	9
Pershore A.Cist.F.1138.	0643	4	5
Halestowen A.Præm.F.T. Joh. Reg.	0282	13	4
Bordesly A. Cist. F.1138.	0388	9	10
Eborum.			
St.Mary Eborum A. Ben.F.2.W.Ruf	1550	7	0
Selby A.Ben.F.T.Conq.	0729	12	10
Kirkstall A.Cist.F.1147.	0329	2	11
De Rupe A.Cist.F. 1147.	0224	2	5
Monks Burton A.Clun.F.circa 1186.	0239	3	6
Nostell A. C.S.A. F.T.H.1.	0492	18	2
Pomfrait A.Clun..F.T.Conq.	0337	14	8
Gisborne A.C.S.A.F.T.Steph.R.	0628	3	4
Whitby A.Ben.F.T.Conq.	0437	2	9
Montegratia A.Carth.F.circa 1356.	0323	2	10
Newburge P.C.S.A. F.1145.	0367	8	3
Belland A.Cist.F.1134.	0238	9	4
Kirkham A. C.S.A.F.T.H.1.	0269	5	9
Melsa A.Cist.F.1136.	0299	6	4
Brilington C.S.A.F.T.H 1.	0547	6	11
Walton A.Gilbertines F.T.Steph.Reg.	0360	16	10
Bolton in Craven P.C.S.A. F.T.H.1.	0212	3	4
Rival A.Cist.F.1132.	0278	10	2
Jerval A.Cist. F.T.Steph. Reg.	0234	18	5
Furnes A.Cist.F.1127.	0805	16	5
De Fontibus Cist.F.1132.	0998	6	8
Warter P.C.S.A.F.T.H.1.	0221	3	10
Rithal per Speed.	0351	14	6
Old Maulton. A. F.T. Steph. R. per Speed.	0257	7	0
St.Michael juxta Hull Carth.F.1377.	0231	17	3

Wallia.

	l.	s.	d.
Valle de Sancta Cruce Com. Denbigh. Cist. F. T. E. 1.	0214	3	5
Strata Florida Cardiganſh. Cist. or Clun. F. T. Conq.	1226	6	0

Gloria Deo Patri, Deo Filio
& Spiritui Sancto.
Amen.

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